



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2612/2
MCP/EAW/ZDW:amn&cjs

2019 SENATE BILL 188

April 30, 2019 - Introduced by Senators TESTIN, L. TAYLOR, BERNIER, BEWLEY, LARSON, MARKLEIN, COWLES and OLSEN, cosponsored by Representatives KURTZ, CONSIDINE, KRUG, KULP, QUINN, KOLSTE, MYERS, MURSAU, NOVAK, PLUMER, SPREITZER, TRANEL, VANDERMEER, VRUWINK, BROOKS, DUCHOW, KNODL, MEYERS, OLDENBURG, POPE, SARGENT, C. TAYLOR and TUSLER. Referred to Committee on Agriculture, Revenue and Financial Institutions.

1 **AN ACT** *to repeal* 23.33 (1) (jo) 5., 23.335 (1) (zgm) 5., 30.50 (10m) (e), 94.55 (2)
2 (e), 94.55 (3), 94.55 (3) (c), 94.67 (15r), 340.01 (50m) (e), 350.01 (10v) (e), 885.235
3 (1) (d) 5., 939.22 (33) (e), 961.32 (3) (b) 2. and 967.055 (1m) (b) 5.; **to amend**
4 20.115 (7) (gc), 23.33 (4c) (a) 5., 23.33 (4c) (b) 4. b., 23.335 (12) (a) 5., 23.335 (12)
5 (b) 5., 30.681 (1) (d), 30.681 (2) (d) 1. b., 94.55 (1), 94.55 (2) (title), 94.55 (2) (a),
6 94.55 (2) (b) 2., 94.55 (2) (b) 3., 94.55 (2) (b) 4., 94.55 (2) (b) 5., 94.55 (2) (c), 94.67
7 (2), 97.02, 182.001 (3), 343.305 (8) (b) 2. g., 343.305 (8) (b) 4m. (intro.), 343.305
8 (8) (b) 4m. a., 343.305 (8) (b) 5. c., 346.63 (1) (d), 346.63 (2) (b) 2., 348.27 (18) (a)
9 1. f., 350.101 (1) (e), 350.101 (2) (d) 2., 940.09 (2) (b), 940.25 (2) (b), 941.20 (1)
10 (bm), 961.01 (14), 961.14 (4) (t) 1., 961.32 (2m) (b), 961.32 (3) (a) 1. and 2., 961.32
11 (3) (b) (intro.), 961.32 (3) (b) 1., 961.32 (3) (b) 3., 961.32 (3) (b) 4., 961.32 (3) (b)
12 5., 961.32 (3) (c), 961.32 (3) (d), 961.34 (2) (a), 961.34 (2) (b), 961.38 (1n) (a),
13 961.38 (1n) (b), 961.442 (intro.) and 961.55 (9); **to repeal and recreate** 94.55
14 (title); and **to create** 20.115 (7) (f), 94.55 (2) (am), 94.55 (2) (b) 2m., 94.55 (2) (b)

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1 4g., 94.55 (2) (b) 4m., 94.55 (2) (b) 4s., 94.55 (2) (f), 94.55 (2g), 94.55 (2m), 94.55
2 (2p), 94.55 (2r), 94.55 (2t), 94.55 (3m), 94.55 (3r), 94.55 (3w), 94.67 (15c), 961.01
3 (3r), 961.14 (4) (t) 3., 961.32 (3) (b) 4m., 961.32 (3) (b) 4r. and 961.32 (3) (cm) of
4 the statutes; **relating to:** regulating hemp, providing an exemption from
5 emergency rule procedures, granting rule-making authority, and making an
6 appropriation.

Analysis by the Legislative Reference Bureau

This bill makes several changes to current law relating to industrial hemp.

The bill changes current law in the following ways so that it is consistent with the 2018 federal farm bill:

1. Uses the term “hemp” instead of “industrial hemp” throughout current law and defines “hemp” as “*Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater.” The bill also provides that “hemp” does not include a prescription drug product approved by the U.S. food and drug administration.

2. Prohibits any person from producing hemp in this state without a license from the Department of Agriculture, Trade and Consumer Protection if required under federal law.

3. Allows DATCP to establish procedures for all of the following: a) maintaining information relating to hemp production; b) testing for THC concentrations in hemp; c) disposing of hemp plants grown illegally; d) complying with enforcement provisions; and e) conducting annual inspections of hemp producers.

4. Provides that a hemp producer who negligently violates the provisions of the hemp program or DATCP’s rules relating to the hemp program must comply with a plan established by DATCP to correct the violation. A compliance plan must include a reasonable date by which the hemp producer is required to correct the violation and must require the hemp producer to report to DATCP periodically, for not less than two years, on the status of the producer’s compliance with the plan. A hemp producer who negligently violates the provisions of the hemp program or DATCP’s rules relating to the hemp program may not be criminally prosecuted; a hemp producer who negligently violates those provisions three times in a five-year period is ineligible to participate in the hemp program for five years.

5. Requires DATCP to immediately report a hemp producer who violates the provisions of the hemp program or DATCP’s rules relating to the hemp program with a culpable mental state that is greater than negligence to the Department of Justice and the U.S. attorney general.

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6. Prohibits a person who materially falsifies any information contained in an application for the hemp program from participating in the hemp program.

7. Prohibits a person from producing hemp for ten years following a felony conviction relating to a controlled substance under state or federal law, unless the person holds a valid license under any state's hemp pilot program on the effective date of the bill.

8. Redefines "marijuana," for the purposes of the controlled substances act, to exclude hemp.

9. Excludes THC contained in hemp from the list of Schedule I controlled substances.

10. Changes the current hemp pilot program under DATCP to a permanent program and sunsets the pilot program.

The bill also does the following relating to hemp:

1. Creates an appropriation from the general fund for the hemp program in the 2019-21 biennium, and increases funding to DATCP for the current 2018-19 fiscal year for the purchase of machinery and other assets for the hemp program.

2. Allows DATCP to establish lower license fees for hemp licenses issued for research or noncommercial purposes.

3. Allows DATCP to set criteria for approving persons to undertake any sampling and testing of hemp that DATCP requires by rule and to approve persons that meet the criteria.

4. Prohibits DATCP from requiring sampling and testing of hemp seedlings or clones intended to be planted that originate from certified hemp seed or from hemp seed or clones approved for growing by DATCP.

5. Requires DATCP to issue a fit for commerce certificate after hemp is tested, or if DATCP determines that hemp is not required to be tested.

6. Allows a person, whose personally identifying information relating to the hemp program is in DATCP's possession, to authorize the disclosure of that information.

7. Requires all hemp producers to notify DATCP of the variety of hemp the producer intends to grow, and prohibits a hemp producer from growing hemp unless DATCP has approved that variety of hemp for growing in this state or that variety of hemp has been certified by DATCP.

8. Prohibits a person from mislabeling hemp or a hemp product, knowingly making an inaccurate claim about the content, quality, or origin of hemp or a hemp product in the course of transferring or selling, or knowingly selling at retail mislabeled hemp or hemp products.

9. Requires contracts to purchase hemp from a hemp grower to provide for payment to the grower within seven days of taking possession of the hemp, unless the grower voluntarily and knowingly agrees otherwise.

10. Adds hemp to the list of agricultural products that may not be grown by, or grown on land owned by, a large corporation or trust.

11. Clarifies that THC contained in a CBD product is not a Schedule I controlled substance if the THC and CBD concentration is at a level without a psychoactive effect.

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12. Changes the provision under current law that exempts a person from prosecution for selling, transferring, processing, harvesting, or taking possession of cannabis that is over the permissible THC concentration for hemp, so that the exemption applies to cannabis that had been tested and certified, by DATCP or a person approved by DATCP, as meeting the permissible THC concentration for hemp, but that is in fact above the permissible limit, if the person has no reason to believe that the certification is incorrect.

13. Provides that a person may not be prosecuted for temporarily possessing cannabis that is above the permissible THC concentration for hemp during the normal course of processing hemp if the cannabis is reconditioned or processed to meet the permissible THC concentration limit for hemp within a reasonable amount of time.

14. Provides that a person who purchases hemp or a hemp product may not be prosecuted if the product is no more than 0.7 percent over the permissible THC limit for hemp and if the person has no reason to believe that the product is over the permissible THC limit for hemp.

15. Removes THC from the definition of “restricted controlled substance” as applicable to the operation of a motor vehicle, an all-terrain vehicle, a utility terrain vehicle, an off-highway motorcycle, a snowmobile, or a motorboat and the handling of a firearm.

For further information see the *state* 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.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

				2019-20	2020-21
3	20.115	Agriculture, trade and consumer			
4		protection, department of			

5 (7) AGRICULTURAL RESOURCE MANAGEMENT

6	(f)	Hemp	GPR	A	216,500	216,500
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7 **SECTION 2.** 20.115 (7) (f) of the statutes is created to read:

8 20.115 (7) (f) *Hemp*. The amounts in the schedule for regulation of activities
9 relating to hemp under s. 94.55.

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1 **SECTION 3.** 20.115 (7) (gc) of the statutes is amended to read:

2 20.115 (7) (gc) ~~Industrial hemp~~ *Hemp; program fees*. All moneys received under
3 s. 94.55 for regulation of activities relating to industrial hemp under s. 94.55.

4 **SECTION 4.** 23.33 (1) (jo) 5. of the statutes is repealed.

5 **SECTION 5.** 23.33 (4c) (a) 5. of the statutes is amended to read:

6 23.33 (4c) (a) 5. 'Defenses.' In an action under subd. 2m. that is based on the
7 defendant allegedly having a detectable amount of methamphetamine, or
8 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
9 the defendant has a defense if he or she proves by a preponderance of the evidence
10 that at the time of the incident or occurrence he or she had a valid prescription for
11 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
12 acid, ~~or delta-9-tetrahydrocannabinol~~.

13 **SECTION 6.** 23.33 (4c) (b) 4. b. of the statutes is amended to read:

14 23.33 (4c) (b) 4. b. In an action under subd. 2m. that is based on the defendant
15 allegedly having a detectable amount of methamphetamine, or
16 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
17 the defendant has a defense if he or she proves by a preponderance of the evidence
18 that at the time of the incident or occurrence he or she had a valid prescription for
19 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
20 acid, ~~or delta-9-tetrahydrocannabinol~~.

21 **SECTION 7.** 23.335 (1) (zgm) 5. of the statutes is repealed.

22 **SECTION 8.** 23.335 (12) (a) 5. of the statutes is amended to read:

23 23.335 (12) (a) 5. In an action under subd. 2m. that is based on the defendant
24 allegedly having a detectable amount of methamphetamine, or
25 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,

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1 the defendant has a defense if he or she proves by a preponderance of the evidence
2 that at the time of the incident or occurrence he or she had a valid prescription for
3 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
4 acid, ~~or delta-9-tetrahydrocannabinol.~~

5 **SECTION 9.** 23.335 (12) (b) 5. of the statutes is amended to read:

6 23.335 (12) (b) 5. In an action under subd. 2m. that is based on the defendant
7 allegedly having a detectable amount of methamphetamine, or
8 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
9 the defendant has a defense if he or she proves by a preponderance of the evidence
10 that at the time of the incident or occurrence he or she had a valid prescription for
11 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
12 acid, ~~or delta-9-tetrahydrocannabinol.~~

13 **SECTION 10.** 30.50 (10m) (e) of the statutes is repealed.

14 **SECTION 11.** 30.681 (1) (d) of the statutes is amended to read:

15 30.681 (1) (d) *Defenses.* In an action under par. (b) 1m. that is based on the
16 defendant allegedly having a detectable amount of methamphetamine, or
17 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
18 the defendant has a defense if he or she proves by a preponderance of the evidence
19 that at the time of the incident or occurrence he or she had a valid prescription for
20 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
21 acid, ~~or delta-9-tetrahydrocannabinol.~~

22 **SECTION 12.** 30.681 (2) (d) 1. b. of the statutes is amended to read:

23 30.681 (2) (d) 1. b. In an action under par. (b) 1m. that is based on the defendant
24 allegedly having a detectable amount of methamphetamine, or
25 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,

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1 the defendant has a defense if he or she proves by a preponderance of the evidence
2 that at the time of the incident or occurrence he or she had a valid prescription for
3 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
4 acid, ~~or delta-9-tetrahydrocannabinol.~~

5 **SECTION 13.** 94.55 (title) of the statutes is repealed and recreated to read:

6 **94.55 (title) Hemp.**

7 **SECTION 14.** 94.55 (1) of the statutes is amended to read:

8 94.55 (1) DEFINITION. In this section, “~~industrial hemp~~” means the plant
9 Cannabis sativa, ~~or L. and any part of the that plant, including the seeds, having~~
10 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
11 isomers, whether growing or not, with a delta-9-tetrahydrocannabinol
12 concentration of no ~~not~~ more than 0.3 percent on a dry weight basis or the maximum
13 concentration allowed under federal law up to 1 percent, whichever is greater.
14 ~~“Industrial hemp” includes a substance, material, or product only if it is designated~~
15 ~~as a controlled substance under the federal Controlled Substances Act under 21 USC~~
16 ~~801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both, as tested~~
17 using post-decarboxylation or other similarly reliable methods. “Hemp” does not
18 include a prescription drug product that has been approved by the U.S. food and drug
19 administration.

20 **SECTION 15.** 94.55 (2) (title) of the statutes is amended to read:

21 94.55 (2) (title) REGULATION OF INDUSTRIAL HEMP.

22 **SECTION 16.** 94.55 (2) (a) of the statutes is amended to read:

23 94.55 (2) (a) Subject to the provisions under this ~~subsection~~ section, a person
24 may plant, grow, cultivate, harvest, produce, sample, test, process, transport,

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1 transfer, take possession of, sell, import, and export industrial hemp in this state to
2 the greatest extent allowed under federal law.

3 **SECTION 17.** 94.55 (2) (am) of the statutes is created to read:

4 94.55 (2) (am) The department shall issue licenses to hemp producers if hemp
5 producers are required to hold a license to produce hemp under federal law and if the
6 secretary of the U.S. department of agriculture has approved this state's hemp
7 program. If the department issues such licenses, no person may produce hemp
8 without a license from the department. Licenses from the department may authorize
9 the planting, growing, cultivating, harvesting, producing, sampling, testing,
10 processing, transporting, transferring, taking possession, selling, importing, and
11 exporting of hemp. The department shall identify the requirements for applying for
12 a license, approving or denying a license, and suspending or revoking a license, and
13 shall identify the restrictions and obligations that apply to operating under a license.
14 The department may restrict license eligibility based on a violation reported under
15 sub. (2m). The department shall accept license applications throughout the calendar
16 year. The department may set license terms and may set late fees for license
17 renewals.

18 **SECTION 18.** 94.55 (2) (b) 2. of the statutes is amended to read:

19 94.55 (2) (b) 2. Except as provided under ~~subds. 3. to 6. and subs. (3) and (4)~~
20 this section, rules promulgated under this ~~paragraph~~ section shall regulate the
21 activities described in par. (a) only to the extent required under federal law, and in
22 a manner that allows the people of this state to have the greatest possible
23 opportunity to engage in those activities.

24 **SECTION 19.** 94.55 (2) (b) 2m. of the statutes is created to read:

25 94.55 (2) (b) 2m. The department may establish all of the following:

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1 a. A practice to maintain relevant information regarding land on which hemp
2 is produced in this state, including a legal description of the land, as defined by the
3 department, for a period of not less than 3 years.

4 b. A procedure for testing, using post-decarboxylation or other similarly
5 reliable methods, delta-9-tetrahydrocannabinol concentration levels of hemp.

6 c. A procedure for the effective disposal of plants, whether growing or not, that
7 are produced in violation of this section, and products derived from those plants.

8 d. A procedure to comply with the enforcement provisions under subs. (2g) and
9 (2m).

10 e. A procedure for conducting annual inspection of, at a minimum, a random
11 sample of hemp producers to verify that hemp is not produced in violation of this
12 section.

13 **SECTION 20.** 94.55 (2) (b) 3. of the statutes is amended to read:

14 94.55 (2) (b) 3. The department shall promulgate rules, as the department
15 determines to be necessary, to ensure the quality of industrial hemp ~~grown or~~
16 ~~processed~~ produced in this state, the security of activities related to industrial hemp,
17 and the safety of products produced from industrial hemp, including any necessary
18 testing; to ensure that the state's hemp program complies with federal law and to
19 obtain and maintain any required federal approval of the state's hemp program; to
20 verify adherence to laws and rules governing activities related to industrial hemp;
21 and to enforce violations of those laws and rules.

22 **SECTION 21.** 94.55 (2) (b) 4. of the statutes is amended to read:

23 94.55 (2) (b) 4. The department shall require the payment of an initial fee from
24 any person who ~~plants, grows, or cultivates industrial~~ produces hemp in this state
25 equal to the greater of \$150 or \$5 multiplied by the number of acres on which the

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1 person will ~~plant, grow, or cultivate industrial~~ produce hemp, but not to exceed
2 \$1,000. The department may also impose an annual fee on any person whose
3 activities related to ~~industrial~~ hemp are regulated by the department under this
4 paragraph, in an amount not to exceed an amount sufficient to cover the costs to the
5 department of regulating those activities, as determined by the department by rule.
6 The department may establish lower initial and annual fees for licenses issued for
7 research or noncommercial purposes.

8 **SECTION 22.** 94.55 (2) (b) 4g. of the statutes is created to read:

9 94.55 (2) (b) 4g. The department may set criteria for approving persons to
10 undertake any sampling and testing required by the department by rule. The
11 department shall approve persons that meet the criteria to the extent allowed under
12 federal law.

13 **SECTION 23.** 94.55 (2) (b) 4m. of the statutes is created to read:

14 94.55 (2) (b) 4m. When sampling and testing a crop of hemp, the department
15 is not required to sample and test every growing location or every strain. The
16 department may not require the sampling and testing of hemp seedlings or clones
17 that are intended to be planted and that originated from hemp seed certified under
18 par. (c) or from hemp seed or clones approved for growing under par. (f).

19 **SECTION 24.** 94.55 (2) (b) 4s. of the statutes is created to read:

20 94.55 (2) (b) 4s. Following any required sampling and testing, or if the
21 department determines that sampling and testing are not required, the department
22 shall issue a certificate that states that the hemp has been tested or is not required
23 to be tested for delta-9-tetrahydrocannabinol concentration and is in compliance
24 with this section and rules promulgated under this section.

25 **SECTION 25.** 94.55 (2) (b) 5. of the statutes is amended to read:

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1 94.55 (2) (b) 5. The department shall ensure that any of the following
2 information that is in the department's possession relating to a licensee or applicant
3 for a license under this section is confidential and not open to public inspection or
4 copying under s. 19.35 (1), except that it shall be made available to a law enforcement
5 agency or law enforcement officer:

6 a. Information relating to the locations of ~~industrial hemp fields and processing~~
7 locations production locations.

8 b. Personally identifiable information relating to a person who is lawfully
9 engaging in activities related to ~~industrial hemp, unless the person elects, during the~~
10 application and licensing or renewal process, for the department to release any or all
11 of the person's personally identifiable information.

12 c. Information obtained about an individual as a result of any criminal history
13 search performed in relation to authorizing the individual to engage in activities
14 related to ~~industrial hemp~~.

15 d. Any other information about activities related to ~~industrial hemp~~ that could
16 create a security risk if disclosed.

17 **SECTION 26.** 94.55 (2) (c) of the statutes is amended to read:

18 94.55 (2) (c) The department shall establish and administer a certification
19 program, or shall designate a member of the Association of Official Seed Certifying
20 Agencies or a successor organization to administer a certification program, for
21 ~~industrial hemp seed~~ in this state. A certification program under this paragraph
22 shall include the testing and certification of delta-9-tetrahydrocannabinol
23 concentrations in hemp plants from which certified seed is collected. Participation
24 in the certification program shall be voluntary for ~~growers and cultivators~~ producers
25 of ~~industrial hemp~~. The department shall promulgate rules for the administration

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1 of any certification program established and administered by the department under
2 this paragraph.

3 **SECTION 27.** 94.55 (2) (e) of the statutes is repealed.

4 **SECTION 28.** 94.55 (2) (f) of the statutes is created to read:

5 94.55 (2) (f) Before growing hemp, a hemp producer shall notify the department
6 of the variety of hemp the producer intends to grow. A hemp producer may not grow
7 hemp unless the department has approved the growth of that variety of hemp or the
8 variety of hemp is certified under par. (c).

9 **SECTION 29.** 94.55 (2g) of the statutes is created to read:

10 94.55 (2g) **NEGLIGENT VIOLATIONS.** (a) This subsection applies only to hemp
11 producers, and only if the department determines that the hemp producer has
12 negligently violated this section or rules promulgated under this section, including
13 by negligently doing any of the following:

14 1. Failing to provide a legal description of land on which the producer produces
15 hemp.

16 2. If required under federal law, failing to obtain a license or other required
17 authorization from the department or from the U.S. department of agriculture.

18 3. Producing *Cannabis sativa* L. with a delta-9-tetrahydrocannabinol
19 concentration of more than 0.3 percent on a dry weight basis or the maximum
20 concentration allowed by law up to 1%.

21 (b) A hemp producer who negligently violates this section or rules promulgated
22 under this section shall comply with a plan established by the department to correct
23 the negligent violation, which shall include all of the following:

24 1. A reasonable date by which the hemp producer is required to correct the
25 negligent violation.

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1 2. A requirement that the hemp producer periodically report to the department
2 on the compliance of the hemp producer with the department's plan for a period of
3 not less than the following 2 years.

4 (c) A hemp producer who negligently violates this section or rules promulgated
5 under this section 3 times in any 5-year period is ineligible to produce hemp for a
6 period of 5 years beginning on the date of the 3rd violation.

7 **SECTION 30.** 94.55 (2m) of the statutes is created to read:

8 **94.55 (2m) GREATER VIOLATIONS.** If the department determines that a hemp
9 producer has violated this section or rules promulgated under this section with a
10 culpable mental state greater than negligence, the department shall immediately
11 report the hemp producer to the U.S. attorney general and the department of justice.

12 **SECTION 31.** 94.55 (2p) of the statutes is created to read:

13 **94.55 (2p) FELONY CONVICTIONS.** No person may produce hemp in this state for
14 10 years following any felony conviction relating to a controlled substance under
15 state or federal law unless the person holds a valid license, registration, or other
16 authorization to produce hemp under a pilot program of any state authorized by
17 section 7606 of the federal agricultural act of 2014 on the effective date of this
18 subsection [LRB inserts date].

19 **SECTION 32.** 94.55 (2r) of the statutes is created to read:

20 **94.55 (2r) FALSE STATEMENT.** Any person who materially falsifies any
21 information contained in an application to participate in the hemp program
22 established under this section is ineligible to participate in the program.

23 **SECTION 33.** 94.55 (2t) of the statutes is created to read:

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1 **94.55 (2t)** ACCESS TO CANNABIDIOL PRODUCTS. Nothing in this section or rules
2 promulgated under this section shall be construed as limiting a person's access to
3 cannabidiol products under s. 961.32 (2m) (b).

4 **SECTION 34.** 94.55 (3) of the statutes, as affected by 2019 Wisconsin Act ... (this
5 act), is repealed.

6 **SECTION 35.** 94.55 (3) (c) of the statutes is repealed.

7 **SECTION 36.** 94.55 (3m) of the statutes is created to read:

8 **94.55 (3m)** TRUTH IN LABELING. (a) No person may do any of the following:

9 1. Mislabel hemp or a hemp product.

10 2. Knowingly make an inaccurate claim about the content,
11 delta-9-tetrahydrocannabinol concentration, quality, or origin of hemp or a hemp
12 product in the course of transferring or selling the hemp or hemp product.

13 3. Knowingly sell at retail mislabelled hemp or hemp products.

14 (b) The department shall investigate violations of par. (a). The department, or
15 any district attorney or the department of justice upon the request of the department,
16 may on behalf of the state do any of the following:

17 1. Bring an action for temporary or permanent injunctive relief in any court of
18 competent jurisdiction for any violation of par. (a).

19 2. Bring an action in any court of competent jurisdiction for the recovery of a
20 civil forfeiture against any person who violates par. (a) in an amount not more than
21 \$1,000 for each violation.

22 (c) In addition to any other remedies provided by law, any person suffering a
23 pecuniary loss because of a violation of par. (a) may bring a civil action to recover
24 damages together with costs and disbursements, including reasonable attorney fees,
25 and for equitable relief as determined by the court.

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1 **SECTION 37.** 94.55 (3r) of the statutes is created to read:

2 **94.55 (3r) PRIVATE CAUSE OF ACTION FOR GROWER CONTRACTS.** Any contract to
3 purchase hemp from a hemp grower in this state shall provide that payment will be
4 made to the grower within 7 days of taking possession of the hemp, unless the grower
5 voluntarily and knowingly agrees to a different method of payment. In addition to
6 any other remedies provided by law, any person suffering a pecuniary loss because
7 of a violation of this subsection may bring a civil action to recover damages together
8 with costs and disbursements, including reasonable attorney fees, notwithstanding
9 s. 814.04 (1), and for equitable relief as determined by the court.

10 **SECTION 38.** 94.55 (3w) of the statutes is created to read:

11 **94.55 (3w) EMERGENCY RULES.** When promulgating rules under this section, the
12 department may, as necessary, use the procedure under s. 227.24 to promulgate
13 emergency rules. Notwithstanding s. 227.24 (1) (a) and (3), when promulgating
14 emergency rules under this subsection, the department is not required to provide
15 evidence that promulgating a rule under this subsection as an emergency rule is
16 necessary for the preservation of the public peace, health, safety, or welfare and is
17 not required to provide a finding of emergency for a rule promulgated under this
18 subsection. Notwithstanding s. 227.24 (1) (c) and (2), initial emergency rules and
19 subsequent emergency rules promulgated under this subsection remain in effect
20 until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1)
21 (e) 1d. and 1g., for emergency rules promulgated under this subsection, the
22 department is not required to prepare a statement of scope of the rules or to submit
23 the proposed rules in final draft form to the governor for approval.

24 **SECTION 39.** 94.67 (2) of the statutes is amended to read:

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

5 **SECTION 40.** 94.67 (15c) of the statutes is created to read:

6 94.67 (15c) “Hemp” has the meaning given in s. 94.55 (1).

7 **SECTION 41.** 94.67 (15r) of the statutes is repealed.

8 **SECTION 42.** 97.02 of the statutes is amended to read:

9 **97.02 Standards; adulterated food.** For the purposes of this chapter, a food
10 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
11 department may not consider a food to be adulterated solely because it contains
12 industrial hemp, as defined in s. 94.67 ~~(15r)~~ (15c), or an industrial a hemp product.

13 **SECTION 43.** 182.001 (3) of the statutes is amended to read:

14 182.001 (3) PROHIBITED ACTIVITIES. Those farming operations prohibited under
15 this section are the production of dairy products not including the processing of such
16 dairy products; the production of cattle, hogs and sheep; and the production of wheat,
17 field corn, barley, oats, rye, hay, pasture, soybeans, millet ~~and, sorghum, and hemp.~~

18 **SECTION 44.** 340.01 (50m) (e) of the statutes is repealed.

19 **SECTION 45.** 343.305 (8) (b) 2. g. of the statutes is amended to read:

20 343.305 (8) (b) 2. g. Whether the person had a valid prescription for
21 methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid
22 ~~or delta-9-tetrahydrocannabinol~~ in a case in which subd. 4m. a. and b. apply.

23 **SECTION 46.** 343.305 (8) (b) 4m. (intro.) of the statutes is amended to read:

24 343.305 (8) (b) 4m. (intro.) If, at the time the offense allegedly occurred, all of
25 the following apply, the hearing officer shall determine whether the person had a

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1 valid prescription for methamphetamine or one of its metabolic precursors, or
2 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~:

3 **SECTION 47.** 343.305 (8) (b) 4m. a. of the statutes is amended to read:

4 343.305 (8) (b) 4m. a. A blood test administered in accordance with this section
5 indicated that the person had a detectable amount of methamphetamine, or
6 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ but did not have a
7 detectable amount of any other restricted controlled substance in his or her blood.

8 **SECTION 48.** 343.305 (8) (b) 5. c. of the statutes is amended to read:

9 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
10 a valid prescription for methamphetamine or one of its metabolic precursors, or
11 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~.

12 **SECTION 49.** 346.63 (1) (d) of the statutes is amended to read:

13 346.63 (1) (d) In an action under par. (am) that is based on the defendant
14 allegedly having a detectable amount of methamphetamine, or
15 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
16 the defendant has a defense if he or she proves by a preponderance of the evidence
17 that at the time of the incident or occurrence he or she had a valid prescription for
18 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
19 acid, ~~or delta-9-tetrahydrocannabinol~~.

20 **SECTION 50.** 346.63 (2) (b) 2. of the statutes is amended to read:

21 346.63 (2) (b) 2. In an action under par. (a) 3. that is based on the defendant
22 allegedly having a detectable amount of methamphetamine, or
23 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
24 the defendant has a defense if he or she proves by a preponderance of the evidence
25 that at the time of the incident or occurrence he or she had a valid prescription for

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1 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
2 acid, ~~or delta-9-tetrahydrocannabinol.~~

3 **SECTION 51.** 348.27 (18) (a) 1. f. of the statutes is amended to read:

4 348.27 (18) (a) 1. f. Industrial hemp Hemp, as defined in s. 94.67 ~~(15r)~~ (15c).

5 **SECTION 52.** 350.01 (10v) (e) of the statutes is repealed.

6 **SECTION 53.** 350.101 (1) (e) of the statutes is amended to read:

7 350.101 (1) (e) *Defenses.* In an action under par. (bm) that is based on the
8 defendant allegedly having a detectable amount of methamphetamine, or
9 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
10 the defendant has a defense if he or she proves by a preponderance of the evidence
11 that at the time of the incident or occurrence he or she had a valid prescription for
12 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
13 acid, ~~or delta-9-tetrahydrocannabinol.~~

14 **SECTION 54.** 350.101 (2) (d) 2. of the statutes is amended to read:

15 350.101 (2) (d) 2. In an action under par. (bm) that is based on the defendant
16 allegedly having a detectable amount of methamphetamine, or
17 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
18 the defendant has a defense if he or she proves by a preponderance of the evidence
19 that at the time of the incident or occurrence he or she had a valid prescription for
20 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
21 acid, ~~or delta-9-tetrahydrocannabinol.~~

22 **SECTION 55.** 885.235 (1) (d) 5. of the statutes is repealed.

23 **SECTION 56.** 939.22 (33) (e) of the statutes is repealed.

24 **SECTION 57.** 940.09 (2) (b) of the statutes is amended to read:

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1 940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm) that
2 is based on the defendant allegedly having a detectable amount of
3 methamphetamine or gamma-hydroxybutyric acid or
4 ~~delta-9-tetrahydrocannabinol~~ in his or her blood, the defendant has a defense if he
5 or she proves by a preponderance of the evidence that at the time of the incident or
6 occurrence he or she had a valid prescription for methamphetamine or one of its
7 metabolic precursors or gamma-hydroxybutyric acid or
8 ~~delta-9-tetrahydrocannabinol~~.

9 **SECTION 58.** 940.25 (2) (b) of the statutes is amended to read:

10 940.25 (2) (b) In any action under this section that is based on the defendant
11 allegedly having a detectable amount of methamphetamine, or
12 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
13 the defendant has a defense if he or she proves by a preponderance of the evidence
14 that at the time of the incident or occurrence he or she had a valid prescription for
15 methamphetamine or one of its metabolic precursors, or gamma-hydroxybutyric
16 acid, ~~or delta-9-tetrahydrocannabinol~~.

17 **SECTION 59.** 941.20 (1) (bm) of the statutes is amended to read:

18 941.20 (1) (bm) Operates or goes armed with a firearm while he or she has a
19 detectable amount of a restricted controlled substance in his or her blood. A
20 defendant has a defense to any action under this paragraph that is based on the
21 defendant allegedly having a detectable amount of methamphetamine, or
22 gamma-hydroxybutyric acid, ~~or delta-9-tetrahydrocannabinol~~ in his or her blood,
23 if he or she proves by a preponderance of the evidence that at the time of the incident
24 or occurrence he or she had a valid prescription for methamphetamine or one of its

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1 metabolic precursors, or gamma-hydroxybutyric acid, ~~or~~
2 ~~delta-9-tetrahydrocannabinol.~~

3 **SECTION 60.** 961.01 (3r) of the statutes is created to read:

4 961.01 (3r) “Cannabidiol product” means a derivative or extract of the plant
5 Cannabis sativa L. that contains cannabidiol and a delta-9-tetrahydrocannabinol
6 concentration at a level without a psychoactive effect.

7 **SECTION 61.** 961.01 (14) of the statutes is amended to read:

8 961.01 (14) “Marijuana” means all parts of the plants of the genus Cannabis,
9 whether growing or not; the seeds thereof; the resin extracted from any part of the
10 plant; and every compound, manufacture, salt, derivative, mixture or preparation of
11 the plant, its seeds or resin, including tetrahydrocannabinols. “Marijuana” does
12 include the mature stalks if mixed with other parts of the plant, but does not include
13 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other
14 compound, manufacture, salt, derivative, mixture or preparation of the mature
15 stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed
16 of the plant which is incapable of germination. “Marijuana” does not include hemp,
17 as defined in s. 94.55 (1).

18 **SECTION 62.** 961.14 (4) (t) 1. of the statutes is amended to read:

19 961.14 (4) (t) 1. ~~Cannabidiol in a form without a psychoactive effect~~
20 Tetrahydrocannabinols contained in a cannabidiol product that is dispensed as
21 provided in s. 961.38 (1n) (a) or that is possessed as provided in s. 961.32 (2m) (b).

22 **SECTION 63.** 961.14 (4) (t) 3. of the statutes is created to read:

23 961.14 (4) (t) 3. Tetrahydrocannabinols contained in hemp, as defined in s.
24 94.55 (1).

25 **SECTION 64.** 961.32 (2m) (b) of the statutes is amended to read:

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1 961.32 **(2m)** (b) An individual may possess a cannabidiol in a form without a
2 psychoactive effect product if the individual has certification stating that the
3 individual possesses a cannabidiol product to treat a medical condition, if the
4 certification has an issue date that is no more than one year prior to the possession,
5 and if any expiration date provided by the physician in the certification has not
6 passed. A certification is not required to possess hemp, as defined in s. 94.55 (1), or
7 a prescription drug product that has been approved by the U.S. food and drug
8 administration.

9 **SECTION 65.** 961.32 (3) (a) 1. and 2. of the statutes are amended to read:

10 961.32 **(3)** (a) 1. “Hemp” “Cannabis” means the plant Cannabis sativa, or L. and
11 any part of the that plant, including the seeds thereof and all derivatives, extracts,
12 cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not.

13 2. “Industrial hemp” “Hemp” has the meaning given in s. 94.55 (1).

14 **SECTION 66.** 961.32 (3) (b) (intro.) of the statutes is amended to read:

15 961.32 **(3)** (b) (intro.) A person who is acting in accordance with not otherwise
16 violating s. 94.55 or rules promulgated by the department of agriculture, trade and
17 consumer protection under s. 94.55 (2) (b) may not be prosecuted for a criminal
18 offense under this chapter, or under any municipal an ordinance that prohibits
19 conduct that is the same as that prohibited under this chapter enacted under s. 59.54
20 (25) or 66.0107 (1) (bm), for any of the following:

21 **SECTION 67.** 961.32 (3) (b) 1. of the statutes is amended to read:

22 961.32 **(3)** (b) 1. Planting, growing, cultivating, harvesting, producing,
23 processing, or transporting hemp cannabis that contains a
24 delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent
25 above the permissible limit for industrial hemp on a dry weight basis or that is grown

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1 from industrial hemp seed certified under s. 94.55 (2) (c) or approved for growing by
2 the department of agriculture, trade and consumer protection under s. 94.55 (2) (f).

3 **SECTION 68.** 961.32 (3) (b) 2. of the statutes is repealed.

4 **SECTION 69.** 961.32 (3) (b) 3. of the statutes is amended to read:

5 961.32 (3) (b) 3. Selling, transferring, importing, exporting, processing,
6 transporting, harvesting, or taking possession of hemp cannabis that has been
7 certified under s. 94.55 (2) (e) tested and certified, by a laboratory authorized the
8 department of agriculture, trade and consumer protection or a person approved by
9 the department of agriculture, trade and consumer protection to test the
10 delta-9-tetrahydrocannabinol concentration in hemp under s. 94.55 (2) (b) 4g., as
11 meeting the permissible delta-9-tetrahydrocannabinol concentration limit for
12 industrial hemp if the person has no reason to believe that the test certification is
13 incorrect.

14 **SECTION 70.** 961.32 (3) (b) 4. of the statutes is amended to read:

15 961.32 (3) (b) 4. Possessing hemp with cannabis that contains a
16 delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent above the
17 permissible level limit for industrial hemp if the hemp was certified under s. 94.55
18 (2) (e) at the time the possessor took possession as meeting the permissible
19 concentration limit for industrial hemp and the possessor had no reason to believe
20 at that time that the certification was incorrect on a dry weight basis if the possessor
21 reconditions or processes the cannabis to a delta-9-tetrahydrocannabinol
22 concentration at or below the permissible limit for hemp with the approval of the
23 department of agriculture, trade and consumer protection of those actions.

24 **SECTION 71.** 961.32 (3) (b) 4m. of the statutes is created to read:

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1 961.32 (3) (b) 4m. Temporarily possessing cannabis during the normal course
2 of processing hemp if the possessor reconditions or processes the cannabis to a
3 delta-9-tetrahydrocannabinol concentration at or below the permissible limit for
4 hemp within a reasonable amount of time.

5 **SECTION 72.** 961.32 (3) (b) 4r. of the statutes is created to read:

6 961.32 (3) (b) 4r. Possessing cannabis purchased or obtained at retail that
7 contains a delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent
8 above the permissible limit for hemp if the possessor has no reason to believe that
9 the cannabis contains a delta-9-tetrahydrocannabinol concentration above the
10 permissible limit for hemp.

11 **SECTION 73.** 961.32 (3) (b) 5. of the statutes is amended to read:

12 961.32 (3) (b) 5. Taking samples of ~~hemp~~ cannabis, transporting samples to a
13 testing facility, or testing samples for their delta-9-tetrahydrocannabinol
14 concentration or for the presence of other substances.

15 **SECTION 74.** 961.32 (3) (c) of the statutes is amended to read:

16 961.32 (3) (c) A person who ~~plants, grows, cultivates, harvests, samples, tests,~~
17 ~~processes, transports, transfers, takes possession of, sells, imports, or exports~~
18 ~~industrial hemp in violation of~~ violates s. 94.55 or a rule promulgated under s. 94.55
19 ~~(2) (b)~~ may not be prosecuted under s. 94.55 or this chapter unless the person is
20 referred to the district attorney for the county in which the violation occurred or to
21 the department of justice by the department of agriculture, trade and consumer
22 protection, and may not be prosecuted under ~~a municipal~~ an ordinance that
23 ~~prohibits the same conduct as is prohibited under this chapter enacted under s. 59.54~~
24 (25) or 66.0107 (1) (bm), unless the person is referred to the local law enforcement

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1 prosecuting authority by the department of agriculture, trade and consumer
2 protection.

3 **SECTION 75.** 961.32 (3) (cm) of the statutes is created to read:

4 961.32 (3) (cm) A hemp producer that negligently violates s. 94.55 or a rule
5 promulgated under s. 94.55, as described under s. 94.55 (2g) (a), may not be
6 prosecuted under s. 94.55 or this chapter or an ordinance enacted under s. 59.54 (25)
7 or 66.0107 (1) (bm).

8 **SECTION 76.** 961.32 (3) (d) of the statutes is amended to read:

9 961.32 (3) (d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity
10 described under ~~par. (b)~~ s. 94.55 (2) (a) does not constitute prima facie evidence of a
11 prohibited representation under s. 961.41 (4) (am) 1. a. or b.

12 **SECTION 77.** 961.34 (2) (a) of the statutes is amended to read:

13 961.34 (2) (a) Upon the request of any physician, the controlled substances
14 board shall aid the physician in applying for and processing an investigational drug
15 permit under 21 USC 355 (i) for cannabidiol as treatment for a ~~seizure disorder~~
16 medical condition. If the federal food and drug administration issues an
17 investigational drug permit, the controlled substances board shall approve which
18 pharmacies and physicians may dispense cannabidiol products to patients.

19 **SECTION 78.** 961.34 (2) (b) of the statutes is amended to read:

20 961.34 (2) (b) If cannabidiol is products other than hemp are removed from the
21 list of controlled substances, or if cannabidiol is products are determined not to be
22 ~~a controlled substance~~ substances, under schedule I of 21 USC 812 (c), the controlled
23 substances board shall approve which pharmacies and physicians may dispense
24 cannabidiol products to patients as treatment for a ~~seizure disorder~~ medical
25 condition.

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1 **SECTION 79.** 961.38 (1n) (a) of the statutes is amended to read:

2 961.38 **(1n)** (a) A pharmacy or physician approved under s. 961.34 (2) (a) or (b)
3 may dispense cannabidiol ~~in a form without a psychoactive effect~~ products as a
4 treatment for a medical condition.

5 **SECTION 80.** 961.38 (1n) (b) of the statutes is amended to read:

6 961.38 **(1n)** (b) A physician licensed under s. 448.04 (1) (a) may issue an
7 individual a certification, as defined in s. 961.32 (2m) (a), stating that the individual
8 possesses a cannabidiol product to treat a medical condition ~~if the cannabidiol is in~~
9 ~~a form without a psychoactive effect.~~

10 **SECTION 81.** 961.442 (intro.) of the statutes is amended to read:

11 **961.442 Penalties; industrial hemp.** (intro.) If a person attempts to conceal
12 the commission of a crime under this chapter while representing that he or she is
13 engaging in the planting, growing, cultivating, harvesting, producing, processing,
14 transporting, importing, exporting, selling, transferring, sampling, testing, or
15 taking possession of industrial hemp, the maximum term of imprisonment
16 prescribed by law for that crime may be increased as follows:

17 **SECTION 82.** 961.55 (9) of the statutes is amended to read:

18 961.55 **(9)** If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
19 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
20 delta-9-tetrahydrocannabinol ~~in a whole dry plant~~ is found to exceed 0.7 percent
21 above the permissible limit for ~~industrial hemp~~ on a dry weight basis, as tested using
22 post-decarboxylation or other similarly reliable methods, the entire crop ~~on the field~~
23 at the growing location where the plant was found shall be seized and destroyed.
24 Before a crop is seized and destroyed under this subsection, the agency whose officers
25 or employees intend to seize and destroy the crop shall provide, to the person licensed

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1 under s. 94.55 (3) to grow the crop or to the person's agent or employee, written
2 documentation verifying the test results for the crop that is subject to seizure and
3 destruction.

4 **SECTION 83.** 967.055 (1m) (b) 5. of the statutes is repealed.

5 **SECTION 84. Nonstatutory provisions.**

6 (1) NOTIFICATION. The department of agriculture, trade and consumer
7 protection shall notify the legislative reference bureau when the secretary of the U.S.
8 department of agriculture establishes a plan under section 297C of the Agricultural
9 Marketing Act of 1946. The legislative reference bureau shall publish a notice in the
10 Wisconsin Administrative Register that specifies the date on which s. 94.55 (3) is
11 repealed, as determined under SECTION 87 (1) of this act.

12 (2) HEMP POSITIONS. The authorized FTE positions for the department of
13 agriculture, trade and consumer protection are increased by 3.0 GPR positions on
14 July 1, 2019, to be funded from the appropriation under s. 20.115 (7) (f), for the
15 purpose of regulating activities relating to hemp under s. 94.55.

16 **SECTION 85. Fiscal changes.**

17 (1) PURCHASE OF MACHINERY. In the schedule under s. 20.005 (3) for the
18 appropriation to the department of agriculture, trade and consumer protection
19 under s. 20.115 (7) (a), the dollar amount for fiscal year 2018-19 is increased by
20 \$300,000 for the purchase or acquisition of machinery and other assets for the hemp
21 program under s. 94.55.

22 **SECTION 86. Initial applicability.**

23 (1) HEMP PURCHASE CONTRACTS. The treatment of s. 94.55 (3r) first applies to a
24 contract that is entered into, renewed, or modified on the effective date of this
25 subsection.

