



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1539/P8
CH/JK/SB/MP/MM:wlj&amn

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

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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.

OTHER HEALTH AND HUMAN SERVICES

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. 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:

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

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

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

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

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

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

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

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

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

SECTION 5. 59.54 (25m) of the statutes is amended to read:

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

SECTION 6. 66.0107 (1) (bm) of the statutes is amended to read:

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

of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

****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.

SECTION 7. 66.0107 (1) (bp) of the statutes is amended to read:

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

SECTION 8. 66.0414 of the statutes is created to read:

66.0414 Cultivation of tetrahydrocannabinols. No village, town, city, or county may enact or enforce an ordinance or a resolution that prohibits cultivating tetrahydrocannabinols or cannabis if the cultivation is by one of the following:

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

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

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

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

66.1201 **(2m)** DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility, or privilege under ss. 66.1201 to 66.1211 may not be denied the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or national origin.

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

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

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

66.1301 **(2m)** DISCRIMINATION. Persons entitled to any right, benefit, facility, or privilege under ss. 66.1301 to 66.1329 may not be denied the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person

holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or national origin.

SECTION 12. 66.1331 (2m) of the statutes is amended to read:

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

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

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

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

77.54 (14) (intro.) The sales price from the sales of and the storage, use, or other consumption in this state of drugs that are any of the following, not including cannabis and tetrahydrocannabinols procured from dispensary, as defined in s. 94.57 (1) (a):

SECTION 15. 94.57 of the statutes is created to read:

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

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

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

(c) “Medication with tetrahydrocannabinols” has the meaning given in s. 146.44 (1) (c).

(d) “Qualifying patient” has the meaning given in s. 146.44 (1) (e).

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

(f) “Treatment team” has the meaning given in s. 961.01 (20t).

(g) “Usable cannabis” has the meaning given in s. 961.01 (21f).

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

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

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

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

- (a) Convenience to treatment teams and the preferences of treatment teams.
- (b) The ability of an applicant to provide to treatment teams a sufficient amount of tetrahydrocannabinols.
- (c) The experience the applicant has running a nonprofit organization or a business.
- (d) The preferences of the governing bodies with jurisdiction over the area in which the applicants are located.
- (e) The ability of the applicant to keep records confidential and maintain a safe and secure facility.
- (f) The ability of the applicant to abide by the prohibitions under sub. (4).

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

- (a) The entity is located within 500 feet of a public or private elementary or secondary school, including a charter school.
- (b) The dispensary distributes to a treatment team a number of cannabis plants or an amount of usable cannabis that, in the period of distribution, results in the treatment team possessing more than the maximum authorized amount.
- (c) The dispensary possesses a number of cannabis plants or an amount of usable cannabis that exceeds the combined maximum authorized amount for all of

the treatment teams that use the dispensary by a number or an amount determined by the department by rule to be unacceptable.

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

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

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

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

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

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

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

(c) An entity operating under policies determined under sub. (2) and rules promulgated under sub. (9) may possess tetrahydrocannabinols, possess or

manufacture tetrahydrocannabinols with the intent to deliver or distribute to a dispensary, or deliver or distribute tetrahydrocannabinols to a dispensary.

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

(e) A dispensary shall have all tetrahydrocannabinols and cannabis tested for mold, fungus, pesticides, and other contaminants and may not distribute tetrahydrocannabinols or cannabis that test positive for mold, fungus, pesticides, or other contaminants if the contaminants, or level of contaminants, are identified by the testing laboratories under sub. (7) to be potentially unsafe to a qualifying patient's health.

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

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

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

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

(c) Provide training to persons who hold registry identification cards, treatment teams, persons employed by dispensaries, and entities that grow cannabis and distribute to dispensaries cannabis and tetrahydrocannabinols, as provided by

policies determined under sub. (2) and rules promulgated under sub. (9), on the following:

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

2. Security and inventory accountability procedures.

3. The most recent research on medication with tetrahydrocannabinols.

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

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

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

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

(a) “Medication with tetrahydrocannabinols” has the meaning given in s. 961.01 (14g).

(b) “Usable cannabis” has the meaning given in s. 961.01 (21f).

(2) No employer is required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivation of medication with tetrahydrocannabinols or usable cannabis in the workplace, and any employer may have a policy restricting the use of marijuana by its employees.

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

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

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

CHAPTER 139

SUBCHAPTER IV

DISPENSARY SURCHARGE

139.97 Definitions. In this subchapter:

(1) “Department” means the department of revenue.

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

139.971 Imposition. (1) A surcharge is imposed on a dispensary at the rate of 10 percent of the total price of cannabis and tetrahydrocannabinols sold or otherwise dispensed to an unrelated person, including any charge by the dispensary that is necessary to complete the sale. For purposes of this subsection, the total price

of cannabis and tetrahydrocannabinols shall not be reduced by costs or expenses incurred by the dispensary, such as fees, delivery, freight, transportation, packaging, handling, marketing, taxes, and import fees or duties, regardless of whether such costs or expenses are separately stated on the invoice. The total price also shall not be reduced by the value or cost of discounts or free promotional or sample products. For purposes of this subsection, a dispensary is considered related to another person if the 2 entities have significant common purposes and substantial common membership or, directly or indirectly, substantial common direction or control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If a person fails to file any return or report required under s. 139.972 by the due date, unless the person shows that that failure was due to reasonable cause and not due to neglect, the department shall add to the amount of surcharge required to be shown on that return 5 percent of the amount of the surcharge if the failure is for not more than one month, and an additional 5 percent of the surcharge for each additional month or fraction of a month during which the failure continues, but not

more than 25 percent of the surcharge. For purposes of this subsection, the amount of the surcharge required to be shown on the return shall be reduced by the amount of surcharge that is paid on or before the due date and by the amount of any credit against the surcharge that may be claimed on the return.

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

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

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

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

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

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

(a) “Applicant” means a person who is applying for a registry identification card under sub. (2) (a) or (ac).

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

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

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

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

(b) “Debilitating medical condition or treatment” means any of the following:

1. Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to 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.

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

3. 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, including those characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

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

(c) “Medication with tetrahydrocannabinols” means any of the following:

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

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

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

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

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

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

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

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

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

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

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

- a. Allow medication with tetrahydrocannabinols for the person.
- b. Serve as a primary caregiver for the person.
- c. Manage the person’s medication with tetrahydrocannabinols.

(f) “Registrant” means a person to whom a registry identification card is issued.

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

(h) “Written certification” means a statement written by a person’s practitioner if all of the following apply:

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

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

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

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

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

2. A written certification.

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

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

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

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

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

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

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

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

(am) 1. In this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A photograph of the registrant.

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

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

(5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult registrant shall notify the department of any change in the registrant's name and

address. An adult registrant who is a qualifying patient shall notify the department of any change in his or her practitioner, of any significant improvement in his or her health as it relates to his or her debilitating medical condition or treatment, and if a primary caregiver stops helping the registrant in the registrant's medication with tetrahydrocannabinols. A registrant who is a primary caregiver shall notify the department if the registrant becomes a primary caregiver for an additional qualifying patient and shall include with the notice a copy of a written certification or copy of a registration identification card for each additional qualifying patient.

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

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

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

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

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

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

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

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

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

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

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

234.29 Equality of occupancy and employment. The authority shall require that occupancy of housing projects assisted under this chapter be open to all regardless of sex, race, religion, or sexual orientation;; status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or creed,

and that contractors and subcontractors engaged in the construction of economic development or housing projects, shall provide an equal opportunity for employment, without discrimination as to sex, race, religion, sexual orientation, or creed.

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

289.33 (3) (d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8), and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415, 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III of ch. 91.

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

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

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

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

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

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

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

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

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

767.451 (5m) (d) In an action to modify a legal custody order, the court may not consider as a factor in making a determination whether a parent or potential

custodian holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or has been a qualifying patient, as defined in s. 146.44 (1) (e), or a primary caregiver, as defined in s. 146.44 (1) (d), unless the parent or potential custodian's behavior creates an unreasonable danger to the child that can be clearly articulated and substantiated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 40. 961.32 (2m) of the statutes is repealed.

SECTION 41. 961.38 (1n) of the statutes is repealed.

SECTION 42. 961.436 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. A school bus or a public transit vehicle.
- b. The person's place of employment.
- c. Public or private school premises.
- d. A juvenile correctional facility.
- e. A jail or adult correctional facility.
- f. A public park, beach, or recreation center.
- g. A youth center.

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

as a qualifying patient or the subject of the written certification is a qualifying patient and that, if the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of a debilitating medical condition or treatment.

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

SECTION 43. 961.52 (2) (a) 1. and 2. of the statutes are amended to read:

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

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

SECTION 44. 961.55 (8) (c), (d) and (e) of the statutes are created to read:

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

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

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

SECTION 45. 961.555 (2) (am) 6. of the statutes is amended to read:

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

SECTION 46. 961.555 (2r) of the statutes is created to read:

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

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

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

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

SECTION 47. 961.56 (1) of the statutes is amended to read:

961.56 (1) ~~It~~ Except as provided in s. 961.555 (2r) (b) and except for any presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the

state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is upon the person claiming it.

SECTION 48. 961.5755 of the statutes is created to read:

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

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

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

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

SECTION 49. 968.072 of the statutes is created to read:

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

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

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

(b) “Medication with tetrahydrocannabinols” has the meaning given in s. 961.01 (14g).

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

(c) “Primary caregiver” has the meaning given in s. 146.44 (1) (d).

(d) “Qualifying patient” has the meaning given in s. 146.44 (1) (e).

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

(f) “Treatment team” has the meaning given in s. 961.01 (20t).

(g) “Written certification” has the meaning given in s. 146.44 (1) (h).

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The member delivers, possesses with intent to deliver, or manufactures with intent to deliver to another member of his or her treatment team drug paraphernalia,

knowing that it will be primarily used by the treatment team for medication with tetrahydrocannabinols.

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

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

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

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

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

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

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

SECTION 50. 968.12 (6) of the statutes is created to read:

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

SECTION 51. 968.19 of the statutes is renumbered 968.19 (1) and amended to read:

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

SECTION 52. 968.19 (2) of the statutes is created to read:

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

SECTION 53. 968.20 (1g) (intro.) of the statutes is amended to read:

968.20 (1g) (intro.) The court shall order such notice as it deems adequate to be given the district attorney and, unless notice was provided under s. 968.26 (7), to all persons who have or may have an interest in the property. The court shall hold a hearing to hear all claims to its true ownership. Except for a hearing commenced by the court, the hearing shall occur no more than 30 days after a motion is filed except that either party may, by agreement or for good cause, move the court for one extension of no more than 10 days. Any motion may be supported by affidavits or other submissions. If the right to possession is proved to the court's satisfaction, it

shall order the property, ~~other than contraband or property covered under sub. (1m) or (1r) or s. 173.21 (4) or 968.205,~~ returned if the court finds any of the following:

SECTION 54. 968.20 (1j) of the statutes is created to read:

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

1. "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).
2. "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

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

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

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

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

(END)