

MARIJUANA-RELATED PROVISIONS

Governor: Legalize recreational marijuana in certain amounts for personal use. Modify the Uniform Controlled Substances Act provisions and other criminal-justice related provisions to reflect marijuana legalization, including repealing certain statutes and modifying certain provisions related to marijuana and tetrahydrocannabinols (THC). Further, create a Uniform Controlled Substances Act subchapter for the regulation of marijuana, including criminal and civil provisions related to permittee allowances and prohibitions, underage persons, and special dispositions for marijuana-related crimes.

Provide that marijuana sales would be regulated and taxed. Specify that an excise tax would be imposed on marijuana sales at varying rates, depending on the type of sale (wholesale versus retail sale) in addition to a sales tax. In addition, create a medical marijuana registry program administered by the Department of Revenue (DOR), which would require DOR to process applications and issue identification cards. Individuals included in the registry would be exempt from the retail excise and sales taxes. Also, establish a program at the Department of Agriculture, Trade and Consumer Protection (DATCP) to regulate the production, processing, and laboratory testing of marijuana and THC. Under the bill, the sale and distribution of taxable marijuana would be regulated by the state under DOR and DATCP.

Further, establish: (a) a Community Reinvestment Fund consisting of 60% of all moneys received from imposed marijuana excises taxes; (b) an Equity Grant Program to promote diversity and advance inclusion; and (c) a requirement that the Joint Legislative Council study and report on the implementation of the marijuana tax and regulation, including uses for the revenues generated by the tax.

These provisions are described in detail as follows.

1. MODIFICATION OF UNIFORM CONTROLLED SUBSTANCES ACT PROVISIONS AND OTHER CRIMINAL JUSTICE-RELATED PROVISIONS AND DEFINITIONS

Governor: Modify and repeal certain statutes related to marijuana and THC, as follows:

a. Current Law Changes. Repeal Uniform Controlled Substances Act statutes related to: (1) requiring Controlled Substances Board action if cannabidiol or nabiximols is rescheduled; (2) classifying THC as a controlled hallucinogenic substance; (3) lawful possession of a cannabidiol product with a certification for medical use; (4) issuing cannabidiol products and certifications for individuals to possess cannabidiol products for medical use; (5) manufacture, distribution, or delivery of THC; (6) possession with intent to manufacture, distribute, or deliver THC; (7) possession of THC; and (8) penalties relating to THC in certain cases. In addition, repeal regulation of hemp statutes related to access to cannabidiol products.

Modify statutory provisions to: (1) remove THC from the list of substances included in

determining weight of substance provisions; (2) remove references to possession with intent to manufacture, distribute, or deliver THC from conspiracy provisions; (3) remove "or any form of THC" language from offenses involving intent to deliver or distribute a controlled substance on or near certain places provisions; (4) remove references to manufacture, distribution, or delivery of THC from crimes involving certain controlled substances provisions; and (5) renumber and rename "controlled substances therapeutic research" provisions to "marijuana therapeutic research." In addition, modify the intoxicated and reckless flying penalty provisions to provide that an individual must submit to an examination for use of THC and to specify that the required airman safety plan may include treatment for the person's misuse, abuse, or dependence on THC.

Modify statutory language to remove "marijuana" from the list of substances in the penalties statutes for possession of: (1) cocaine and cocaine base; (2) certain hallucinogenic and stimulant drugs; and (3) synthetic cannabinoids. In addition, modify statutory language to remove "marijuana" from: (1) conditional discharge for possession or attempted possession statutes; and (2) second or subsequent offense statutes (also remove references to possession of THC from these statutes).

Modify statutory language on the use or nonuse of lawful products to specify that conflicts with any federal or state statute, rule, or regulation do not apply with respect to violations concerning marijuana or THC under 21 U.S. Code Sections 841 to 865 (the Food and Drugs Title, Drug Abuse Prevention and Control Chapter).

b. Modification of County Marijuana Provisions. Rename the statutory section related to county public protection and safety from "possession of marijuana" provision to "regulation of marijuana." Modify statutory language to remove references to the prohibited possession of marijuana, and instead provide that the county board of supervisors may enact and enforce an ordinance that is consistent with marijuana regulation restrictions and penalties (including those for underage persons) in state statute, except that if a complaint is issued alleging a violation of restrictions and penalties under state statute, the subject of the complaint may not be prosecuted under the county ordinance section for the same action that is subject to the complaint, unless specific circumstances are present.

c. Definitions. For the purposes of the Uniform Controlled Substances Act, modify the definition of "marijuana" to mean all parts of the plants of the genus *Cannabis*, whether growing or not, with a tetrahydrocannabinols concentration that is greater than 0.3% on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. For the purposes of fair employment provisions, "lawful product" includes marijuana, and "marijuana" has the same meaning as given in the Uniform Controlled Substance Act definition.

Repeal part of the definition of "drug paraphernalia" to exclude: (1) "separation gins and sifters used, designed for use, or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana"; (2) references to "roach clips," "chilams," or "bongs"; and (3) any other reference to "marijuana" in the definition.

In addition, repeal part of the definition of "restricted controlled substance" to exclude "delta-9-THC, excluding its procurers or metabolites, at a concentration of one or more nanograms

per milliliter of a person's blood."

Joint Finance/Legislature: Provision not included.

2. MARIJUANA REGULATIONS -- CRIMINAL AND CIVIL PROVISIONS

Governor: Create a statutory subchapter within the Uniform Controlled Substances Act (Chapter 961) titled "Regulation of Marijuana." Establish the following provisions:

a. Underage Persons. Create statutory language to prohibit a permittee from selling, distributing, or delivering marijuana to any underage person, and from permitting (directly or indirectly) an unaccompanied underage person from entering or attempting to enter the premises of a retail outlet. A permittee that violates these prohibitions may be subject to a forfeiture of not more than \$500 and to a permit suspension for an amount of time not to exceed 30 days. Specify that all relevant circumstances may be considered when determining if a permittee has committed a violation, and proof of certain facts by the permittee is a defense to prosecution for such a violation (including the fact that: (1) the underage person falsely represented that he or she had attained the legal age; (2) the appearance of the underage person was such that an ordinary and prudent person would believe that the underage person had attained the legal age; (3) the action was made in good faith and in reliance on the representation and appearance of the underage person in the belief that the underage person had attained the legal age; and (4) that the underage person supported the false representation with documentation that he or she had attained the legal age).

Specify that any underage person who does any of the following is subject to a forfeiture of not less than \$250 nor more than \$500: (1) procures or attempts to procure marijuana from a permittee; (2) falsely represents his or her age for the purpose of receiving marijuana from a permittee; (3) knowingly possesses or consumes marijuana; or (4) enters or knowingly attempts to enter or be on the premises of a retail outlet unaccompanied by a parent, guardian, or spouse of legal age.

Specify that any individual who has attained the legal age and who knowingly does any of the following may be subject to a forfeiture that does not exceed \$1,000: (1) permits or fails to take action to prevent an underage person from possessing or consuming marijuana on premises owned by the individual or under the individual's control; or (2) encourages or contributes to an underage person procuring or attempting to procure marijuana from a permittee.

b. Prohibitions and Permittee Allowances. Specify that no person, except a permittee, may sell, possess with intent to sell, distribute or deliver, or possess with intent to distribute or deliver marijuana. Any person who violates this prohibition is guilty of a Class I felony (a maximum sentence of one and a half years of confinement and two years extended supervision and/or a \$10,000 fine), except if the individual to whom the marijuana is, or is intended to be, sold, distributed, or delivered has not attained the legal age and the actual or intended seller, distributor, or deliverer is at least three years older than the underage person, in which case the person is guilty of a Class H felony (a maximum sentence of three years of confinement and three years extended supervision and/or a \$10,000 fine).

Specify that a person who is not a permittee and who possesses an amount of marijuana that

exceeds the permissible amount, but does not exceed 28 grams, is subject to a civil forfeiture not to exceed \$1,000, imprisonment not to exceed 90 days, or both. A person who is not a permittee who possesses an amount of marijuana that exceeds 28 grams is guilty of a Class B misdemeanor (imprisonment not to exceed 90 days or fine not to exceed \$1,000, or both), unless the person has taken action to hide how much marijuana the person possess, and any of the following applies (in which case the person is guilty of a Class I felony): (1) the person has a system that could alert the person if law enforcement approaches an area that contains marijuana, if the system exceeds a security system that would be used by a reasonable person in the person's region; (2) the person has in place a method of intimidating individuals who approach an area that contains marijuana, if the method exceeds a method that would be used by a reasonable person in the person's region; or (3) the person has rigged a system so that any individual approaching the area may be injured or killed by the system.

Specify that no person except a permittee may possess marijuana plants that have reached the flowering stage. Any person who violates this prohibition must apply for a permit and is subject to a forfeiture that is not more than twice the permitting fee (the permitting fee is \$2,000 per year). A person who is not a permittee who possesses more than six marijuana plants that have reached the flowering stage at one time is: (1) subject to a civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days, or both, if the number of plants is more than six but not more than 12; (2) guilty of a Class B misdemeanor if the number of plants is more than 12 (with no other aggravating circumstances); or (3) guilty of a Class I felony if the number of plants is more than 12, the individual has taken action to hide the number of plants, and the individual has a certain system or method in place, described above.

Provide that whoever uses or displays marijuana in a public space is subject to a civil forfeiture of not more than \$100. Any person who sells or attempts to sell marijuana via mail, telephone, or Internet is guilty of a Class A misdemeanor (imprisonment not to exceed nine months or fine not to exceed \$10,000, or both).

c. Special Disposition for Marijuana-Related Crimes. Provide that a person serving a sentence or on probation may request resentencing or dismissal (by filing a petition with the sentencing court to request resentencing, adjustment of probation, or dismissal) if: (1) the sentence or probation period was imposed for a violation of manufacture, distribution, or delivery of THC, possession with intent to deliver THC, or possession of THC; and (2) the person either would not have been guilty of a crime, or would have been guilty of a lesser crime, had the violation occurred on or after the effective date of this provision. If the sentencing court receives a petition and determines the petitioner has met the eligibility criteria, the court must schedule a hearing on the petition. If the court determines that the person would have been guilty of a lesser crime, had it occurred on or after the effective date of this provision, the court must resentence the person or adjust the probation (in which case the person must receive credit for time served) and change the record to reflect the lesser crime. If the court determines that the person would not have been guilty of a crime, had the violation occurred on or after the effective date of this provision, the court must dismiss the conviction and expunge the record. Specify that the court must determine that the action does not present a risk or danger to public safety before resentencing, adjusting probation, or dismissing a conviction under these provisions.

Specify that this same criteria allows a person to who has completed his or her period of

probation for the specified THC violations to petition the sentencing court to request expungement of the conviction because the conviction is legally invalid, or request redesignation to a lesser crime. If the court changes or expunges a record under this section, a conviction that was changed or expunged is not considered a conviction for any purpose under state or federal law.

d. Definitions. For the purposes of the Regulation of Marijuana subchapter, the following definitions are used:

"Permissible amount" means one of the following: (1) for a person who is a resident of Wisconsin, an amount that does not exceed two ounces of usable marijuana; or (2) for a person who is not a resident of Wisconsin, an amount that does not exceed one-quarter ounce of usable marijuana.

"Tetrahydrocannabinols concentration" means the percent of delta-9-tetrahydrocannabinol content per dry weight of any part of the plant Cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinol acid and any part of the plant Cannabis regardless of moisture content.

"Underage person" means a person who has not attained the legal age.

"Legal age" means 21 years of age, except in the case of a qualifying patient.

"Permittee," "retail outlet," and "usable marijuana" have the same meanings as given in other statutory provisions.

Joint Finance/Legislature: Provision not included.

3. UNEMPLOYMENT INSURANCE -- DISCHARGE FOR USE OF MARIJUANA

Governor: Provide that an employee's use of marijuana off the employer's premises during nonworking hours, or a violation of the employer's policy concerning such use, does not constitute misconduct or substantial fault under current UI law unless termination for that use is permitted under one of the current exceptions under the state's fair employment law. Under current law, an individual may be disqualified from receiving unemployment insurance benefits if the individual is terminated because of misconduct or substantial fault. Under a separate provision, disqualification by substantial fault would be eliminated.

Under current UI law, as it pertains to the Department's pre-employment and occupational employment drug testing programs, "controlled substance" has the meaning given in 21 USC 802, which includes marijuana. This provision is not modified under the bill. However, under a separate provision in the bill, the Department's pre-employment and occupational employment drug testing programs would be eliminated. [See "Workforce Development--Unemployment Insurance."]

Joint Finance/Legislature: Provision not included.

4. LICENSING OF PRODUCERS, PROCESSORS, AND TESTING LABORATORIES

Governor: Establish a program within DATCP to regulate the cultivation, processing, and laboratory testing of marijuana and products containing THC. Require individuals producing or processing marijuana in Wisconsin to hold a permit from DATCP. Exempt producers and processors handling only industrial hemp from this requirement if they hold an industrial hemp license from the Department.

For the purposes of implementing this provision, define marijuana as all parts of plants in the genus *Cannabis* with THC concentrations greater than 0.3% on a dry weight basis, including seeds, extracted resin, and other derivatives from the plant. Exclude from the definition of marijuana: (a) fiber from *Cannabis* plant stalks; (b) oil or cake made from its seeds; (c) other derivatives of mature stalks except its resin; and (d) any seeds not capable of germination. Further, define marijuana processor as an individual that processes marijuana into a form intended for human consumption, including dried marijuana flowers, marijuana-infused products, and edibles. Define marijuana producer as an individual that produces marijuana for sale at wholesale or for transfer to a processor.

a. Permit Requirements. Establish an annual permit fee of \$2,000 for marijuana processors of any size. Establish an annual permit fee of \$1,800 for producers of up to 1,800 plants, \$2,900 for producers of up to 3,600 plants, \$3,600 for producers of up to 6,000 plants, \$5,100 for producers of up to 10,200 plants, and \$7,100 plus \$800 for every 3,600 plants more than 10,200. Limit the term of permits issued to one year unless renewed, and allow permits to be revoked by the Department at any time.

To the extent allowable under state law pertaining to prohibitions against discrimination, prohibit DATCP from issuing a permit to any individual or organization if they, or a member of the organization with at least 5% ownership interest:

- (a) have been convicted of a violent misdemeanor at least three times;
- (b) have been convicted of a violent felony, unless the person was pardoned;
- (c) have been involuntarily committed for treatment related to drug dependence within the last three years;
- (d) within the last three years have chronically or habitually consumed alcoholic beverages or other substances, including being involuntarily committed for treatment or convicted for handling of a firearm or vehicle while intoxicated;
- (e) have an income derived primarily from gambling or have been convicted of multiple offenses related to gambling;
- (f) have been convicted of crimes related to prostitution;
- (g) have been convicted of providing disallowed compensation to persons holding licenses for sale or distribution of alcohol; or
- (h) have not lived in Wisconsin continuously for at least 90 days prior to applying.

Prohibit any producer or processor with 20 or more employees from receiving a permit from the Department unless it has entered into a labor peace agreement and certified compliance with that agreement as a condition of its permit. Define a labor peace agreement as an agreement between the permittee and a labor organization that prohibits employee strikes, work stoppages, or other economic interference while also allowing the labor organization to organize employees and educate them on employment rights. Waive the current statutory provision that prohibits state or local imposition of labor peace agreements, or conditioning a regulatory approval on the existence of a labor peace agreement.

Prohibit the Department from issuing a permit to marijuana producers to operate within 500 feet of an elementary or secondary school. Prohibit DATCP from issuing a permit to individuals that have not registered with the Department of Revenue for tax purposes.

b. Application Process. Establish a nonrefundable application fee of \$250 for a permit issued by DATCP. Require DATCP to implement a scoring system for approving permits for marijuana cultivation and processing that requires applicants: (a) protect the environment; (b) provide stable and family-supporting jobs; (c) ensure worker and consumer safety; (d) operate secure facilities; and (e) follow applicable laws. Allow DATCP to reject applications from individuals who lack a sufficiently high score under these criteria, and allow the Department to require applicants to provide documentation to assist DATCP in making determinations of permit approvals. Require the Department to notify an applicant in writing of its reasoning for denying a permit, and specify that either of a denial or an approval is subject to judicial review.

c. Municipal Review of Permits. Require DATCP to notify the municipality in which a permittee will operate prior to approving or renewing a permit for marijuana cultivation or processing. Allow a municipality to file an objection to the Department's approval of a permit within 30 days, or longer at DATCP's discretion. Require DATCP to give substantial weight to municipal objections based on: (a) chronic illegal activity associated with any premises controlled by the applicant; (b) conduct of the applicant's patrons at the applicant's premises; and (c) local zoning ordinances. Require DATCP to notify the municipality in writing the reasons for approving or for denying a permit subject to an objection.

d. Penalties. Require that any failure to seek permit, violation of a permit condition, or failure to pay permit fees result in a fine of at least \$100 and up to \$500 and/or six months' imprisonment. Further, require DATCP to revoke a permit of any individual found to be violating permit conditions or failing to pay permit fees, and prohibit an individual from receiving a permit within two years of such a revocation.

e. Rules. Require DATCP to promulgate rules to administer its marijuana regulation program, including those related to inspection of operations and products of permittees, training of permittees' employees, and scoring of applications.

f. Testing Laboratories. Require DATCP to register laboratories for testing THC, allowing them to possess or manufacture THC or related paraphernalia. Require any laboratory registered by the Department to: (a) test marijuana produced for medical use for potency, spoilage, and contaminants; (b) review and conduct research on medical use of THC and unsafe levels of contaminants; (c) provide training for safe cultivation, processing, and distribution of THC for medical use; (d) provide training on security and inventory accountability; and (e) provide training

on recent research regarding use of THC.

g. Prohibition on Local Control. Specify that no municipality may prohibit the cultivation of THC-containing plants outdoors if cultivation is for personal use and does not exceed six marijuana plants at one time.

h. Training and Outreach. Require DATCP to develop a training program for marijuana producers and processors on how to safely and efficiently grow, handle, and test marijuana products. Further, require DATCP to conduct an awareness campaign about the availability and viability of marijuana cultivation and sale in Wisconsin.

i. Funding. Provide the Department \$203,400 PR in 2021-22 and \$251,100 PR in 2022-23 with 3.0 PR positions for administration of the program, funded from permit revenues. Additional information on funding and positions related to the program is shown in an entry under "Agriculture, Trade and Consumer Protection."

Joint Finance/Legislature: Provision not included.

5. MARIJUANA TAX AND REGULATION

Governor: Impose an excise tax on marijuana producers at a rate of 15% of the sales price on wholesale sales or transfers in this state of marijuana to marijuana processors. The wholesale excise tax would also apply to a microbusiness that transfers marijuana to a processing operation within the microbusiness. Additionally, impose an excise tax on marijuana retailers at a rate of 10% of the sales price on retail sales of usable marijuana. Specify that the excise tax on retail sales would not apply to sales of usable marijuana to individuals who hold a tax exemption certificate indicating that they are members of the medical marijuana registry. [See "General Fund Taxes -- Excise Taxes."] Under the bill, persons liable for the wholesale and retail excise taxes would have to pay the taxes to DOR no later than the fifteenth day of the month following the month in which the tax liability was incurred, along with a return, on a form prescribed by DOR. Specify that the state sales and use tax also would not apply for sales of useable marijuana to members of the medical marijuana registry. [See "General Fund Taxes -- Sales and Use Taxes."]

The bill generally establishes that the distribution and sale of marijuana would have to follow a four-tier distribution system, from marijuana producers to processors to distributors to retailers. It specifies that marijuana producers may not sell directly to distributors, and retailers may only purchase usable marijuana from distributors. This provision does not apply to a microbusiness that transfers marijuana or usable marijuana to another operation within the microbusiness. The bill would establish the following provisions regulating the sale and distribution of taxable marijuana.

a. Definitions. The bill would define the following terms.

1. "Marijuana" would have the same meaning as under state laws governing controlled substances. "Useable marijuana" would mean marijuana that has been processed for human consumption and would include dried marijuana flowers, marijuana-infused products, and marijuana edibles.

2. "Marijuana producer" would mean a person who produces marijuana and sells it at wholesale or otherwise transfers it to marijuana processors;

3. "Marijuana processor" would mean a person who processes marijuana into usable marijuana, packages and labels usable marijuana for sale in retail outlets, and sells at wholesale or otherwise transfers usable marijuana to marijuana distributors;

4. "Marijuana distributor" would mean a person in this state who purchases or receives usable marijuana from a marijuana processor and who sells or otherwise transfers the usable marijuana to a marijuana retailer for the purpose of resale to consumers;

5. "Marijuana retailer" would mean a person that sells usable marijuana at a retail outlet;

6. "Microbusiness" would mean a marijuana producer that produces marijuana in one area that is less than 10,000 square feet and who also operates as any two of the following: (i) marijuana processor; (ii) marijuana distributor; or (iii) marijuana retailer.

7. "Permittee" would mean a marijuana producer, marijuana processor, marijuana distributor, marijuana retailer, or microbusiness that would be issued a permit from DOR to conduct business.

8. "Retail outlet" would mean a location for the retail sale of usable marijuana.

9. "Sales price" would mean the total amount of consideration, as defined under laws governing the state sales and use tax.

10. "Lot" would mean a definite quantity of marijuana or usable marijuana identified by a lot number, every portion or package of which is consistent with the factors that appear in the labeling. A "lot number" would mean a number that specifies the marijuana permittee and the harvesting or processing date for each lot.

b. Permit Requirements. The following permit requirements apply to any officers, directors, agents, and stockholders holding 5% or more of the stock of any corporation applying for a permit from DOR. Require that all marijuana producers, processors, distributors, retailers, and microbusinesses apply for and obtain the proper permit from DOR prior to performing such operations. Specify that a separate permit would be required for, and issued to, each class of permittee, and the permit holder would only be allowed to perform operations authorized by the permit. Require each applicant for a permit to pay a nonrefundable application fee of \$250. Additionally, require marijuana producers and processors to also obtain the proper permit from the Department of Agriculture, Trade, and Consumer Protection (DATCP).

Specify that permits issued by DOR would be nontransferable. Therefore, a separate permit would be required for each place in this state where the operations of a marijuana producer, processor, distributor, retailer, or microbusiness would occur, including each retail outlet. Any person who has been issued a permit to operate as a marijuana retailer, or who has any direct or indirect financial interest in the operation of a marijuana retailer, would not be issued a permit to operate as a producer, processor, or distributor. A person who intends to operate as a microbusiness

would not be required to hold separate permits to operate as a marijuana processor, distributor, or retailer, but would have to specify, on the application for a microbusiness permit, the activities that the person would be engaged in as a microbusiness.

Require DOR to implement a competitive scoring system for approving permits. Permits would be issued to the highest scoring applicants, of which DOR determines will best: (a) protect the environment; (b) provide stable, family-supporting jobs to local residents; (c) ensure worker and consumer safety; (d) operate secure facilities; and (e) uphold the laws of the jurisdictions in which they operate. With regard to an applicant for a marijuana retailer permit, DOR would be required to score the applicant, using criteria established by rule, on the applicant's ability to articulate a social equity plan related to the operation of a marijuana retail establishment. The bill would give DOR the ability to deny a permit to an applicant with a low score. DOR would also be allowed to request from the applicant, any information or documentation that the Department deems necessary for determining whether to grant or deny a permit.

Prohibit any distributor or retailer with 20 or more employees from receiving a permit from DOR unless it has entered into a labor peace agreement and certified compliance with that agreement as a condition of its permit. Certification would entail submitting to DOR a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant. Additionally, prohibit DOR from issuing a permit to any person who does not hold a valid business tax registration certificate with DOR.

Prohibit DOR from issuing a permit to any applicant if they:

1. Have been convicted of a violent misdemeanor at least three times;
2. Have been convicted of a violent felony, unless the person was pardoned;
3. Have been committed for involuntary treatment related to drug dependence within the last three years;
4. Have income that comes principally from gambling or have been convicted of two or more gambling offenses;
5. Have been convicted of crimes relating to prostitution;
6. Have been convicted of crimes relating to loaning money, or anything of value, to persons holding alcohol beverage licenses or permits;
7. Are under the age of 21;
8. Have not lived in Wisconsin continuously for at least 90 days prior to applying; or
9. Within the last three years, have chronically and habitually consumed alcoholic beverages or other substances. This provision applies to persons that: (i) have been involuntarily committed for treatment; (ii) have been convicted for handling of a firearm while intoxicated; or (iii) have two or more cases arising out of separate incidents where a court found the person

violated a law relating to operating a motor vehicle under the influence of a controlled substance, a controlled substance analog, or a combination thereof, with an excess or specified range of alcohol concentration, or while under the influence of any drug to a degree that renders the person incapable of safely driving, whether the incident was in violation of: (a) a Wisconsin law or local ordinance in conformity with state law; (b) a law of a federally-recognized American Indian tribe or band in this state; or (c) a law of another jurisdiction.

Additionally, prohibit DOR from issuing a permit to operate any premises which would be within 500 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation facility, child care facility, public park, public transit facility, or library.

Require that DOR, prior to issuing a new or renewed permit, give notice of the permit application to the governing body of the municipality where the permit applicant intends to operate the premises of a marijuana producer, processor, distributor, retailer, or microbusiness. The governing body of the municipality would have the option to file with DOR a written objection to granting or renewing the permit no later than 30 days after DOR submits the notice. The period for filing objections could be extended by DOR, at the municipality's request. Written objections would have to provide all the facts on which the objection is based. In determining whether to grant or deny a permit for which an objection has been filed, the bill would direct DOR to give substantial weight to an objection based on: (a) chronic illegal activity associated with the premises for which the applicant seeks a permit or the premises of any other operation in this state for which the applicant holds or has held a valid permit or license; (b) the conduct of the applicant's patrons inside or outside the premises of any other operation in this state for which the applicant holds, or has held, a valid permit or license; and (c) local zoning ordinances. Define "chronic illegal activity" as a pervasive pattern of activity that threatens the public health, safety, and welfare of the municipality, including any crime or ordinance violation, and that is documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar law enforcement agency records.

Under the bill, if DOR denies a permit, the Department would be required to immediately notify the applicant in writing of the denial and the reasons for the denial. After making a decision to grant or deny a permit for which a municipality filed an objection, DOR would have to immediately notify the governing body of the municipality in writing of its decision and the reasons for the decision. Specify that both DOR's decisions to deny or grant a permit, regardless of an objection filed by a municipality, would be subject to judicial review.

A permit issued by DOR would be valid for one year and could be renewed, except that DOR could revoke or suspend a permit prior to its expiration. Each person granted a permit would be required to pay an annual fee of \$2,000 for as long as the person held the valid permit. Permittees would not be entitled to refunds of the annual fee if their permits were revoked or suspended. Each permittee would have to post the permit in a conspicuous place on the premises to which the permit relates.

c. Regulation. Establish several regulations that govern the activities of permittees. Prohibit any permittee from employing an individual who is under the age of 21, or to which any condition under items 1. through 6. and 9. in the "Permit Requirements" section would apply. Require every employee, immediately after beginning employment, to receive training, approved

by DOR, on the safe handling of marijuana and usable marijuana, and on security and inventory accountability procedures.

Specify that retail outlets could only operate between the hours of 8:00 a.m. and 8:00 p.m., and would not be allowed to sell products or services other than usable marijuana or paraphernalia intended for the storage or use of usable marijuana. Prohibit retailers from selling more than two ounces of usable marijuana (or ¼ ounce to non-Wisconsin residents) to an individual consumer in a single transaction. In conducting the transaction, retailers could not collect, retain, or distribute personal information regarding the retailer's customers, except that which would be necessary to completing the sale of usable marijuana. Require that retailers restrict from entering or being on the premises of a retail outlet any individual under the age of 21, unless that individual is accompanied by a parent or guardian, or is a qualifying patient.

Prohibit retailers from displaying any signage in a window, on a door, or on the outside of the premises of the retail outlet that is visible to the general public from a public right-of-way, with the exception of a single sign, that is no larger than 1,600 square inches, identifying the retail outlet by the permittee's business or trade name. Additionally, prohibit retailers from displaying usable marijuana in any manner that is visible to the general public from a public right of way. Specify that all marijuana retailers and retail employees would be prohibited from consuming, or allowing to be consumed, any usable marijuana on the premises of the retail outlet.

Prohibit all permittees from placing or maintaining an advertisement of usable marijuana in any form or through any medium.

Authorize DOR to develop, by rule, standards to which marijuana and usable marijuana would have to comply. Establish the following baseline standards: (a) no permittee would be allowed to sell marijuana or usable marijuana that contains more than three parts tetrahydrocannabinol (THC) to one part cannabidiol; and (b) no permittee could sell marijuana or usable marijuana that tests positive for mold, fungus, pesticides, or other contaminants, if the contaminants, or level of contaminants, are identified by a testing laboratory to be potentially unsafe to the consumer.

In order to certify that the marijuana and usable marijuana would comply with DOR standards, including testing for potency and for mold, fungus, pesticides, and other contaminants, require that representative samples of the marijuana and usable marijuana produced or processed by every marijuana producer, processor, or microbusiness, be submitted, on a schedule determined by DOR, to a testing laboratory registered by DATCP. After testing, require each laboratory to destroy any part of the sample that remains. Require that the results of the testing be submitted by marijuana producers, processors, and microbusinesses to DOR in the manner prescribed by the Department by rule. If a representative sample does not meet DOR's prescribed standards, the Department would have to take the necessary action to ensure that the entire lot from which the sample was taken is destroyed. DOR would be responsible for promulgating rules: (a) to determine lots and lot numbers; and (b) for the reporting of lots and lot numbers to the Department.

Under the bill, a marijuana processor, or a microbusiness that operates as a marijuana processor, would have to affix a label to all usable marijuana sold to marijuana distributors. Prohibit the label from being designed to appeal to persons under the age of 18. Require the label

to include all of the following: (a) the ingredients and the THC concentration in the usable marijuana; (b) the producer's business or trade name; (c) the licensee or registrant number; (d) the unique identification number; (e) the harvest date; (f) the strain name and product identity; (g) the net weight; (h) the activation time; (i) the name of laboratory performing any test, the test batch number, and the test analysis dates; (j) the logotype for recreational marijuana developed by DATCP; and (k) warnings about all of the following: (1) the risks of marijuana use and pregnancy and the risks of marijuana use by persons under the age of 18; and (2) certain prohibitions that do not exist in current law or under the budget bill. [A technical amendment is needed to remove reference of these non-existent laws.] Additionally, the label on each package of usable marijuana could indicate that the usable marijuana is made in this state. However, this would not be a requirement, as all marijuana processors, or microbusinesses operating as processors, would be prohibited from using marijuana grown outside this state to make usable marijuana.

d. Records and Reports. Require permittees to keep accurate and complete records of the production and sales of marijuana and usable marijuana in Wisconsin. Require that the records be kept on the premises described in the permit and in such manner as to ensure permanency and accessibility for inspection at reasonable hours by DOR's authorized personnel. DOR would have to prescribe reasonable and uniform methods for recordkeeping and making reports, and would have to provide the necessary forms to permittees.

Allow DOR to require, by giving notice, that a permittee revise its records, if the Department determines that the records are not kept in the prescribed form, or are in such a condition that requires an unusual amount of time for DOR to review. If the permittee fails to comply within 30 days, DOR would send a bill requiring the permittee pay, within 10 days, the expenses reasonably attributable to a proper examination and tax determination at the rate of \$30 per day for each auditor used to make the examination and determination.

Require payment of a \$10 late filing fee by any permittee who fails to file a report when due. A mailed report would be filed on time if: (a) it is mailed in a properly addressed envelope with postage prepaid; (b) the envelope is officially postmarked, or marked or recorded electronically under federal postal regulations, on the due date; and (c) the report is actually received by DOR, or at the destination that DOR prescribes, within five days of the due date. These criteria would apply to reports mailed by a designated delivery service. A report that is not mailed would be timely if it were received by DOR, or at its prescribed destination, on or before the due date.

The provisions relating to taxpayer confidentiality of income, franchise, and gift tax returns, would apply under the bill to any information obtained from: (a) any permittee on a tax return, report, schedule, exhibit, or other document; or (b) an audit report relating to the return, report, schedule, exhibit, or document. The exception to this provision would be that DOR would have to publish production and sales statistics under the bill.

e. Administration and Enforcement. Authorize DOR to administer and enforce the provisions relating to marijuana taxation and regulation, and allow the Department to promulgate any rules necessary to do so. Provide duly authorized DOR employees with all necessary police powers to prevent violations. Additionally, authorized personnel of the Department of Justice and DOR, and any law enforcement officer within their respective jurisdictions, would be allowed, at

all reasonable hours, to enter the premises of any permittee and examine the books and records to determine whether the excise tax imposed has been fully paid and may enter and inspect any premises where marijuana or usable marijuana is produced, processed, made, sold, or stored, to determine whether the permittee is complying with all laws governing marijuana taxation and regulation.

Authorize DOR to suspend or revoke the permit of any permittee who violates any provision or rule governing marijuana taxation or regulation, or who violates the Unfair Sales Act. Require DOR to revoke the permit of any permittee who violates the Unfair Sales Act three or more times within a five-year period. Treat as a public nuisance, subject to closure and abatement, any building or location where unlawful sale, possession, storage, or manufacture of marijuana or usable marijuana were to occur.

Prohibit any suit that would restrain or delay collection or payment of marijuana excise taxes. Require all aggrieved taxpayers to pay tax when due and, if paid under protest, allow the taxpayer to sue the state to recover the tax paid any time within 90 days from the payment date. Specify that the taxpayer could request recovery in one suit for as many payments as have been made. Require the Secretary of Administration to pay any tax amount that is determined to be wrongfully collected.

Upon request of the Secretary of Revenue, the Attorney General may represent Wisconsin or assist a district attorney in prosecuting any case regarding marijuana excise taxes and regulation. Grant immunity from prosecution to any person compelled to testify in regard to a violation of marijuana tax regulations, of which that person may have knowledge. Specify that immunity would only apply to the use of the compelled testimony which may tend to incriminate the person.

Several current law provisions on assessment and collection of taxes, as they govern income and franchise taxes, would apply to marijuana excise taxes under the bill. These include provisions regarding: (a) office and field audits; (b) notices of adjustments; (c) notices of additional assessment; (d) additional tax collections or refunds, except that the period during which notice of additional assessment would have to be given begins on the due date of the report required from marijuana permittees; (e) additional methods of tax collection; (f) statutes of limitations on assessments and refunds; (g) tax collection and delinquency; (h) compromises; and (i) denial of licenses due to tax delinquency. The provisions on timely filing as they apply to income and franchise taxes under current law would also apply to the marijuana excise taxes.

f. Theft of Tax Moneys. Specify that all marijuana tax moneys received by a permittee for the sale of marijuana or usable marijuana on which the excise tax were to become due and not paid would be trust funds in the permittee's possession and would be the property of this state. Any permittee who fraudulently withholds, appropriates, or otherwise uses marijuana tax moneys that are the property of this state would be guilty of theft, whether or not the permittee has, or claims to have, an interest in those moneys.

g. Seizure and Confiscation. Specify that all marijuana and usable marijuana produced, processed, made, kept, stored, sold, distributed, or transported in violation of the rules and regulations governing marijuana taxation and regulation, and all tangible personal property used in connection with the marijuana or usable marijuana, would be unlawful property and subject to

seizure by DOR or a law enforcement officer.

Specify the following treatment of marijuana or usable marijuana that has been seized. If the excise tax has not been paid, the marijuana or usable marijuana could be given, if fit for use and practical, to law enforcement officers to use in criminal investigations or sold to qualified buyers by DOR, without notice. The Department could order any marijuana or usable marijuana deemed unfit or impractical for these purposes to be destroyed. If the excise tax has been paid, the marijuana or usable marijuana would be returned to the true owner if ownership could be ascertained and the owner or the owner's agent was not involved in the violation resulting in the seizure. If the ownership could not be ascertained or if the owner or the owner's agent was guilty of the violation that resulted in the seizure of the marijuana or usable marijuana, it could be sold or otherwise disposed of as provided above.

Require DOR to advertise for sale any tangible personal property seized, other than marijuana or usable marijuana, by publication in a newspaper, of which is likely to give notice in the area or to the person affected. Require DOR to insert this notice in the newspaper at least two times. If no person claiming a lien on, or ownership of, the property has notified the Department of the person's claim within 10 days after last insertion of the notice, DOR would then sell the property. If a person claiming a lien on, or ownership of, the property were to notify DOR within this time period, the Department could apply to the circuit court in the county where the property was seized for an order directing disposition of the property or the proceeds from the sale of the property. If the court orders the property to be sold, all liens, if any, would be transferred from the property to the sale proceeds. Neither the property seized nor the proceeds from the sale would be turned over to any claimant of lien or ownership unless the claimant first establishes that the property was not used in connection with any violation or that, if so used, it was done without the claimant's knowledge or consent and without the claimant's knowledge of facts that should have given the claimant reason to believe it would be put to such use. If no claim of lien or ownership is established, or if sale is not practical, the property could be ordered destroyed.

h. Interest and Penalties. Several current law provisions on interest and penalties, as they govern the cigarette tax, would also be created to apply to the excise taxes on marijuana under the bill. These include penalties for: (a) filing false or fraudulent reports; (b) failing to maintain required records; (c) refusing to permit authorized examinations or inspections, except that imprisonment would be for not more than six months; (d) violating any marijuana provision without its own penalty; and (e) violating DOR rules. Interest and penalty provisions as they apply for delinquent and nondelinquent payments and neglect would be created to also apply for marijuana excise tax purposes. Additionally, DOR would be required to revoke the permit of any person who violates the provisions and rules governing marijuana taxation, and could not issue another permit until two years following revocation.

i. Personal Use. Specify that a person possessing no more than six marijuana plants that have reached the flowering stage at any one time would not be subject to the marijuana excise taxes, while a person possessing more than six plants would be required to obtain the appropriate seller's permit and pay the appropriate excise tax.

j. Funding and Positions. Provide \$3,236,600 in 2021-22 and \$2,010,100 in 2022-23

and 18.00 positions annually in a new GPR appropriation under DOR for the purposes of: (a) administering the marijuana tax and; (b) covering the costs incurred in enforcing the taxation and regulation of marijuana producers, marijuana processors, and marijuana retailers. [See "Revenue -- Departmentwide."]

k. Tax Revenues. These provisions would take effect on the effective date of the bill. However, the administration indicates that it does not estimate a fiscal effect associated with the collection of marijuana sales and excise taxes until 2022-23, as it is uncertain how long it will take for marijuana permits to be issued and for legal sales to be made. The administration estimates that the imposition of wholesale and retail excise taxes on marijuana would result in collections of \$65,100,000 and \$67,100,000, respectively, beginning in 2022-23 and annually thereafter (total excise tax collections of \$132,200,000 in 2022-23). The bill would specify that 60% of all moneys received from marijuana excise taxes would be deposited into the newly established Community Reinvestment Fund, and an estimated \$79,320,000 SEG-REV would be deposited into that fund in 2022-23. The administration estimates that the remaining excise taxes deposited in the general fund would increase state tax revenues by \$52,880,000 in 2022-23 and annually thereafter. In addition, the administration estimates the sales and use tax imposed on legal recreational marijuana would increase state tax revenues by \$33,600,000 beginning in 2022-23 and annually thereafter.

Following is a summary of the taxes imposed on recreational marijuana under the bill and the estimated tax amounts to be generated in 2022-23.

	<u>Amount</u>
15% Excise tax on wholesale sales	\$65,100,000
10% Excise tax on retail sales	67,100,000
Sales Tax	<u>33,600,000</u>
Total	\$165,800,000
Deposited to the SEG Community Reinvestment Fund	\$79,320,000
Deposited to the General Fund	<u>86,480,000</u>
Total	\$165,800,000

l. Permit Fee Revenues. The administration estimates that DOR would issue 300 initial permits in 2021-22 and an additional 60 new permits in 2022-23. As noted above, DOR would collect fees totaling \$2,250 for each new permit issued (\$250 application fee plus \$2,000 initial annual permit fee) and \$2,000 for each permit that would be renewed in a given year. Fees collected would be deposited directly into the general fund. As a result, the administration estimates that GPR-REV from DOR would increase by \$675,000 in 2021-22 and \$735,000 in 2022-23. [See "Revenue -- Departmentwide."]

m. Agreement with Tribes. Allow DOR to enter into an agreement with federally-recognized American Indian tribes in this state: (a) for the administration and enforcement of marijuana excise taxes and regulation; and (b) to provide refunds of the excise taxes imposed on marijuana sold on tribal land by or to enrolled members of the tribe residing on the tribal land. Create a new sum sufficient GPR appropriation to pay refunds to eligible tribes for marijuana

excise taxes collected, including interest and penalties, and provide \$6,700,000 in 2022-23 as an estimate of the amounts that would be refunded to the tribes.

Joint Finance/Legislature: Provision not included.

6. MEDICAL MARIJUANA REGISTRY

Governor: Create a medical marijuana registry program administered by the Department of Revenue (DOR) as follows.

a. *Application for a Registry Identification Card.* Specify that an adult claiming to be a qualified patient may apply for a registry identification card by submitting to DOR all of the following: (a) a signed application form that contains the applicant's name, address, and date of birth; (b) a written certification; and (c) the name, address, and telephone number of the applicant's current physician, as listed in the written certification.

b. *Processing the Application.* Require DOR to verify the information submitted by an applicant to the registry and approve or deny the application within 30 days of receipt. Specify that DOR could deny an application only if the required information had not been provided, or if false information had been provided.

c. *Issuance of a Registry Identification Card.* Require DOR to issue a registry identification card and tax exemption certificate within five days of approving an application. Specify that a registry identification card and tax exemption certificate expire four years from the date of issuance, except that DOR would be authorized to void or revoke the card and certificate under certain circumstances. Specify that a registry identification card would have to contain all of the following information: (a) the name, address, and date of birth of the registrant; (b) the date of issuance and expiration of the card; (c) a photograph of the registrant; and (d) other information DOR may require by rule. DOR would determine what information the tax exemption certificate would contain. The tax exemption certificate would allow individuals holding the certificate to purchase usable marijuana without paying the sales tax or the 10% retail excise tax that would otherwise be imposed under the bill.

d. *Additional Information to Be Provided By Registrant.* Require an adult registrant to notify DOR of any change in the registrant's name and address. Specify that an adult registrant who is a qualifying patient would have to notify DOR of any change in his or her physician, or of any significant improvement in his or her health as it relates to his or her debilitating medical condition or treatment. Specify that if the registrant fails to notify DOR within 10 days of any change for which notification is required, his or her registry identification card and tax exemption certificate would be void.

e. *Definitions.* For the purposes of the registry, define a "qualifying patient" as a person who has been diagnosed by a physician as having or undergoing a debilitating medical condition or treatment, but not including a person under the age of 18 years.

Define a "debilitating medical condition or treatment" as any of the following: (a) cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for the presence of HIV, antigen

or nonantigenic products of HIV, or an antibody to HIV, inflammatory bowel disease, including ulcerative colitis or 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; and (b) 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.

Define a "physician" as a person licensed to practice medicine and surgery in Wisconsin.

Define a "written certification" as a statement made by a person's physician for which all of the following apply: (a) it indicates that, in the physician's professional opinion, the person has or is undergoing a debilitating medical condition or treatment and the potential benefits of the person's use of usable marijuana would likely outweigh the health risks for the person; (b) it indicates that this opinion was formed after a full assessment of the person's medical history and current medical condition that was conducted no more than six months prior to making the statement and that the opinion was made in the course of a bona fide physician-patient relationship; (c) it is signed by the physician or is contained in the person's medical records; and (d) it contains an expiration date that is no more than 48 months (four years) after issuance and has not expired.

Define "useable marijuana" as marijuana that has been processed for human consumption and includes dried marijuana flowers, marijuana-infused products, and marijuana edibles.

Define "tax exemption certificate" to mean a certificate to claim the sales tax exemption, which would be created under the bill, from the sale of, and the storage, use, or other consumption of, usable marijuana.

f. *Records.* Require DOR to maintain a list of all registrants. Prohibit DOR from disclosing information from applications it receives or from registration cards that it issues, notwithstanding state laws governing access to records. Permit DOR to disclose, upon request of a law enforcement agency, only information necessary to verify that a person possesses a valid registry identification card.

g. *Rules.* Authorize DOR to promulgate rules to implement the medical marijuana registry program.

Joint Finance/Legislature: Provision not included.

7. COMMUNITY REINVESTMENT FUND

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
SEG-REV	\$79,320,000	-\$79,320,000	\$0

Governor: Create a separate, nonlapsible trust fund, designated the community reinvestment fund, consisting of 60% of all moneys received from marijuana excise taxes imposed

by DOR, including interest and penalties. Estimate that \$79,320,000 SEG-REV would be deposited into the community reinvestment fund in 2022-23. [A technical amendment to the bill would be needed to clarify that the fund would be invested by the State of Wisconsin Investment Board.]

The bill would create the following appropriations for SEG expenditures from the community reinvestment fund in 2022-23:

- a. \$34,852,800 for sparsity aid [See "Public Instruction -- Categorical Aids."];
- b. \$20,000,000 for health equity grants [See "Health Services -- Public Health];
- c. \$5,000,000 for underserved community grants [See "Wisconsin Economic Development Corporation."];
- d. \$5,000,000 for equity grants [See "Administration -- General Agency Provisions."];
and
- e. \$5,000,000 for equity grants [See "Children and Families -- Departmentwide].

Of the estimated \$79.3 million that would be deposited into the community reinvestment fund, \$69.9 million would be appropriated under the bill and \$9.4 million would remain in the fund.

Joint Finance/Legislature: Provision not included.

8. JOINT LEGISLATIVE COUNCIL STUDY

Governor: Require the Joint Legislative Council to: (a) study the implementation of the marijuana tax and regulation; and (b) identify uses for the revenues generated by the tax. Specify that the Council should report its findings, conclusions, and recommendations to the Joint Committee on Finance no later than two years after the effective date of the bill.

Joint Finance/Legislature: Provision not included.