



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4116/1
MIM:cdc

2019 ASSEMBLY BILL 772

January 22, 2020 - Introduced by Representatives SORTWELL, BOWEN, ANDERSON, BROSTOFF, EMERSON, SPREITZER and STUBBS, cosponsored by Senators SMITH and LARSON. Referred to Committee on Small Business Development.

AUTHORS SUBJECT TO CHANGE

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

Analysis by the Legislative Reference Bureau

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

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

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Board requiring drug testing of prospective law enforcement officers, tribal law enforcement officers, jail officers, and secure detention officers; or 6) any employer requirement that an employee be a licensed private security person and carry a firearm in the course of employment.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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

2 **103.157 Employer nonliability for not testing for marijuana or**
3 **synthetic cannabinoids; exceptions. (1) DEFINITIONS.** In this section:

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

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

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

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

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

18 **(3) EXCEPTIONS.** Subsection (2) does not apply to an employer who fails to test
19 for the presence of any tetrahydrocannabinol, synthetic cannabinoid, or controlled

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1 substance analog of a tetrahydrocannabinol or synthetic cannabinoid in the system
2 of an employee or prospective employee if the employee or prospective employee is
3 required to subject to drug testing under any of the following:

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

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

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

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

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

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

25 (END)