



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5891/1
CMH/JK/MCP/SWB:emw

2021 SENATE BILL 1035

March 9, 2022 - Introduced by Senators ERPENBACH, BEWLEY, JOHNSON, CARPENTER, ROYS and RINGHAND, cosponsored by Representatives HESSELBEIN, CONSIDINE, CABRERA, MILROY, HEBL, SINICKI, S. RODRIGUEZ, ANDRACA, EMERSON, SUBECK, SHANKLAND, OHNSTAD, CABRAL-GUEVARA and STUBBS. Referred to Committee on Insurance, Licensing and Forestry.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 450.071 (1) and 968.19; *to amend* 59.54 (25)
2 (a) (intro.), 59.54 (25m), 66.0107 (1) (bm), 66.0107 (1) (bp), 66.1201 (2m),
3 66.1213 (3), 66.1301 (2m), 66.1331 (2m), 66.1333 (3) (e) 2., 77.52 (13), 77.53 (10),
4 101.123 (1) (h) (intro.), 102.43 (9) (e), 106.50 (1m) (h), 111.35 (2) (e), 234.29,
5 289.33 (3) (d), 349.02 (2) (b) 4., 450.07 (1), 767.41 (5) (am) (intro.), 767.451 (5m)
6 (a), 961.555 (2) (am) 6. and 961.56 (1); and *to create* 20.115 (7) (ge), 20.435 (1)
7 (gq), 59.54 (25) (c), 66.0440, 77.54 (70), 94.57, 108.04 (5m), 111.32 (15), 111.34
8 (1) (c), 111.35 (2) (f), 146.44, 450.03 (1) (em), 450.03 (1) (ep), 450.07 (1s), 450.071
9 (1) (b) 2. and 3., 767.41 (5) (d), 767.451 (5m) (d), 961.01 (5m), 961.01 (12v),
10 961.01 (14c), 961.01 (14g), 961.01 (17k), 961.01 (19m), 961.01 (20hm), 961.01
11 (20ht), 961.01 (20t), 961.01 (21f), 961.01 (21t), 961.436, 961.55 (8) (c), (d) and
12 (e), 961.555 (2r), 961.5755, 968.072, 968.12 (6), 968.19 (2) and 968.20 (1j) of the
13 statutes; **relating to:** medical cannabis, providing an exemption from

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1 emergency rule procedures, granting rule-making authority, making an
2 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing, distributing, or delivering tetrahydrocannabinols (THC); 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 the Department of Health Services 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 and 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. DHS must keep registry information and applications confidential except for verifying status for law enforcement purposes. Under the bill, practitioners may not provide a written certification to obtain a registry identification card for himself or herself or any family member, and practitioners who provide written certifications for registry identification cards may not have any financial interest connected to a person or entity that grows, processes, or distributes cannabis.

The bill requires any person operating as a medical cannabis producer, processor, or dispensary to obtain a license from the Department of Agriculture, Trade and Consumer Protection. A producer is defined as a person who grows more than 12 cannabis plants. An applicant may not obtain a license, and DATCP must revoke a license, if the applicant or licensee is located within 500 feet of a school, distributes more than 12 cannabis plants and three ounces of cannabis leaves or flowers to any person, or possesses an excessive quantity of cannabis as determined

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by DATCP. The bill also requires DATCP to register laboratories to conduct testing on medical cannabis. A producer, processor, or dispensary may not have any financial interest in a laboratory, and a laboratory may not have any financial interest in a producer, processor, or dispensary. A license issued by DATCP under the bill does not expire unless revoked. An applicant for a license must pay an initial application fee of at least \$250 and an annual fee of at least \$5,000.

Under the bill, a licensed producer is prohibited from growing medical cannabis for personal, family, or household use and may distribute its medical cannabis only to a licensed processor. A licensed processor must send samples of the medical cannabis that it processes to a registered laboratory to test the THC concentration of the processor's products and test for the presence of certain contaminants. A licensed processor may distribute cannabis plants and processed cannabis leaves or flowers only to a licensed dispensary. A licensed dispensary may dispense medical cannabis only to a qualifying patient or caregiver who presents a valid registry identification card.

The bill authorizes DATCP to inspect, without prior notice, the premises and records of a licensee or an applicant. DATCP may also establish rules for administering and implementing the medical cannabis program as it relates to producers, processors, dispensaries, and laboratories. The bill requires DATCP to promulgate rules that are designed to promote and prioritize producers, processors, and dispensaries that are small, local organizations.

Finally, the bill prohibits discrimination in employment and licensing against individuals who have valid certifications and registration cards based on their use or possession of medical cannabis off the employer's premises during nonworking hours, unless one of certain exceptions applies. The bill similarly provides that an employee who is terminated solely due to a positive drug test for cannabis components or metabolites or who violates the employer's policy concerning the use of cannabis is not disqualified from receiving unemployment insurance or worker's compensation benefits if the employee has a valid certification and registration card, unless 1) the employee uses or possesses medical cannabis on the employer's premises or during working hours; 2) the use impairs the individual's ability to undertake adequately the job-related responsibilities of that individual's employment; or 3) the action is necessary for the employer to avoid losing certain benefits under federal law.

The bill changes state law regarding THC. It does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing THC and applies to both intrastate and interstate violations.

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.

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

2 20.115 (7) (ge) *Medical cannabis licenses and registration.* All moneys received
3 under s. 94.57 (4) to license and regulate producers, processors, and dispensaries,
4 and to register laboratories, under s. 94.57.

5 **SECTION 2.** 20.435 (1) (gq) of the statutes is created to read:

6 20.435 (1) (gq) *Medical cannabis registry.* All moneys received as fees under
7 s. 146.44 (2) (a) 4. and (ac) 3. and (4m) for the purposes of the medical cannabis
8 registry program under s. 146.44.

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

10 59.54 (25) (a) (intro.) The board may enact and enforce an ordinance to prohibit
11 the possession of marijuana, as defined in s. 961.01 (14), subject to par. (c) and the
12 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
13 ordinance; except that if. Any ordinance enacted under this paragraph shall provide
14 a person who is prosecuted under it with the defenses that the person has under s.
15 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint
16 is issued regarding an allegation of possession of more than 25 grams of marijuana,
17 or possession of any amount of marijuana following a conviction in this state for
18 possession of marijuana, the subject of the complaint may not be prosecuted under
19 this subsection for the same action that is the subject of the complaint unless all of
20 the following occur:

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

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1 59.54 (25) (c) A person may not be prosecuted under an ordinance enacted
2 under par. (a) if, under s. 968.072 (2) or (4) (b), the person would not be subject to
3 prosecution under s. 961.41 (3g) (e).

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

5 59.54 (25m) DRUG PARAPHERNALIA. The board may enact an ordinance to
6 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
7 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.
8 Any ordinance enacted under this subsection shall provide a person prosecuted
9 under it with the defenses that the person has under s. 961.5755 to prosecutions
10 under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted
11 under an ordinance enacted under this subsection if, under s. 968.072 (3) or (4) (b),
12 the person would not be subject to prosecution under s. 961.573 (1), 961.574 (1), or
13 961.575 (1). The board may enforce an ordinance enacted under this subsection in
14 any municipality within the county.

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

16 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
17 marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g)
18 (intro.), and provide a forfeiture for a violation of the ordinance; ~~except that if.~~ Any
19 ordinance enacted under this paragraph shall provide a person who is prosecuted
20 under it with the defenses that the person has under s. 961.436 to prosecutions under
21 s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint is issued regarding an allegation
22 of possession of more than 25 grams of marijuana, or possession of any amount of
23 marijuana following a conviction in this state for possession of marijuana, the subject
24 of the complaint may not be prosecuted under this paragraph for the same action that

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1 is the subject of the complaint unless the charges are dismissed or the district
2 attorney declines to prosecute the case.

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

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

12 **SECTION 8.** 66.0440 of the statutes is created to read:

13 **66.0440 Medical cannabis.** No village, town, city, or county may enact or
14 enforce an ordinance or a resolution that prohibits producing, processing,
15 dispensing, testing, or possessing medical cannabis if those actions are lawfully done
16 by any of the following:

17 (1) A licensee under s. 94.57.

18 (2) If the amount of cannabis does not exceed the maximum authorized
19 amount, as defined in s. 961.01 (14c), a person who has a valid registry identification
20 card, as defined in s. 146.44 (1) (g), and is any of the following:

21 (a) A qualifying patient, as defined in s. 146.44 (1) (e), who is taking the actions
22 to provide medical cannabis for his or her own use.

23 (b) A primary caregiver, as defined in s. 146.44 (1) (d), who is taking the actions
24 to provide medical cannabis for his or her qualifying patient.

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

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

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

11 66.1213 **(3)** DISCRIMINATION. Persons otherwise entitled to any right, benefit,
12 facility, or privilege under this section may not be denied the right, benefit, facility,
13 or privilege in any manner for any purpose nor be discriminated against because of
14 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
15 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
16 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
17 has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or
18 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
19 origin.

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

21 66.1301 **(2m)** DISCRIMINATION. Persons entitled to any right, benefit, facility,
22 or privilege under ss. 66.1301 to 66.1329 may not be denied the right, benefit, facility,
23 or privilege in any manner for any purpose nor be discriminated against because of
24 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
25 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person

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

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

6 66.1331 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
7 facility, or privilege under this section may not be denied the right, benefit, facility,
8 or privilege in any manner for any purpose nor be discriminated against because of
9 sex, race, color, creed, or sexual orientation;; status as a victim of domestic abuse,
10 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
11 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
12 has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or
13 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
14 origin.

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

16 66.1333 (3) (e) 2. Persons otherwise entitled to any right, benefit, facility, or
17 privilege under this section may not be denied the right, benefit, facility, or privilege
18 in any manner for any purpose nor be discriminated against because of sex, race,
19 color, creed, or sexual orientation;; status as a victim of domestic abuse, sexual
20 assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person holds, or
21 has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been
22 the subject of a written certification, as defined in s. 146.44 (1) (h), or is or has been
23 a member of a treatment team, as defined in s. 961.01 (20t); or national origin.

24 **SECTION 14.** 77.52 (13) of the statutes is amended to read:

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1 77.52 (13) For the purpose of the proper administration of this section and to
2 prevent evasion of the sales tax it shall be presumed that all receipts are subject to
3 the tax until the contrary is established. The burden of proving that a sale of tangible
4 personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services
5 is not a taxable sale at retail is upon the person who makes the sale unless that
6 person takes from the purchaser an electronic or a paper certificate, in a manner
7 prescribed by the department, to the effect that the property, item, good, or service
8 is purchased for resale or is otherwise exempt, except that no certificate is required
9 for the sale of tangible personal property, or items, property, or goods under sub. (1)
10 (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10),
11 (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46),
12 (51), (52), (66), and (67), and (70).

13 **SECTION 15.** 77.53 (10) of the statutes is amended to read:

14 77.53 (10) For the purpose of the proper administration of this section and to
15 prevent evasion of the use tax and the duty to collect the use tax, it is presumed that
16 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
17 (d), or taxable services sold by any person for delivery in this state is sold for storage,
18 use, or other consumption in this state until the contrary is established. The burden
19 of proving the contrary is upon the person who makes the sale unless that person
20 takes from the purchaser an electronic or paper certificate, in a manner prescribed
21 by the department, to the effect that the property, or items, property, or goods under
22 s. 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise
23 exempt from the tax, except that no certificate is required for the sale of tangible
24 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or

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1 services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n),
2 (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), and (67), and (70).

3 **SECTION 16.** 77.54 (70) of the statutes is created to read:

4 77.54 (70) The sales price from the sales of and the storage, use, or other
5 consumption of medical cannabis and drug paraphernalia delivered or distributed
6 by a dispensary licensed under s. 94.57.

7 **SECTION 17.** 94.57 of the statutes is created to read:

8 **94.57 Medical cannabis. (1) DEFINITIONS.** In this section:

9 (b) “Dispensary” means a person who obtains packaged and labeled medical
10 cannabis from a licensed processor and dispenses that cannabis, and cannabis
11 paraphernalia, at a permanent location to a member of a treatment team holding a
12 valid registry identification card, regardless of whether the dispensing is done in
13 exchange for monetary consideration.

14 (c) “Laboratory” means a person who obtains medical cannabis from a licensed
15 processor and tests that cannabis for tetrahydrocannabinol content and the presence
16 of molds, pesticides, heavy metals, and other contaminants.

17 (d) “Licensee” means a producer, processor, or dispensary that holds a valid
18 license under this section.

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

20 (f) “Medical cannabis” means a cannabis plant or usable cannabis that is
21 intended to be used by a qualifying patient registered under s. 146.44 to alleviate the
22 symptoms or effects of the patient’s debilitating medical condition or treatment.

23 (g) “Processor” means a person who obtains medical cannabis from a licensed
24 producer, processes the medical cannabis into usable cannabis or individual
25 cannabis plants, packages and labels the usable cannabis or cannabis plants, and

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1 transfers or sells the packaged and labeled usable cannabis or cannabis plants to a
2 licensed dispensary.

3 (h) "Producer" means a person who plants, grows, cultivates, or harvests more
4 than 12 cannabis plants for medical cannabis and transfers or sells the medical
5 cannabis to a licensed processor.

6 (i) "Qualifying patient" has the meaning given in s. 146.44 (1) (e).

7 (j) "Registry identification card" has the meaning given in s. 146.44 (1) (g).

8 (k) "School" has the meaning given in s. 118.257 (1) (d).

9 (L) "Treatment team" has the meaning given in s. 961.01 (20t).

10 (m) "Usable cannabis" has the meaning given in s. 961.01 (21f).

11 **(2) LICENSE REQUIRED.** No person may operate in this state as a producer,
12 processor, or dispensary without a license issued by the department under this
13 section. A person who engages in more than one of these activities shall obtain a
14 separate license for each activity. A licensee may engage in the licensed activity at
15 more than one location without obtaining a separate license. No licensee may
16 operate at more than 2 separate locations, regardless of the number of licenses held.
17 A person who is an employee of a licensee is not required to obtain a separate license.
18 A person is not required to obtain a license under this section if the person handles
19 only industrial hemp and holds a valid license under s. 94.55.

20 **(3) LICENSE CRITERIA.** (a) The department may issue a license under this section
21 to an applicant only if the applicant has been a resident of this state for at least the
22 2 years immediately preceding the date of application.

23 (b) The department may not issue a license to, and must revoke a license of, any
24 entity to which any of the following applies:

25 1. The entity is located within 500 feet of a school, including a charter school.

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1 2. If the entity is a dispensary, the dispensary distributes to a member of a
2 treatment team a number of cannabis plants or an amount of usable cannabis that,
3 in the period of distribution, results in the treatment team possessing more than the
4 maximum authorized amount.

5 3. The dispensary possesses a number of cannabis plants or an amount of
6 usable cannabis that exceeds the combined maximum authorized amount for all of
7 the treatment teams that use the dispensary by a number or an amount determined
8 by the department by rule to be unacceptable.

9 4. The applicant, or a principal officer or board member of the applicant, has
10 a financial interest in a registered laboratory.

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

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

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

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

20 **(5) PRODUCERS.** (a) A licensed producer may plant, grow, cultivate, and harvest
21 medical cannabis, including planting, growing, cultivating, and harvesting
22 outdoors; transfer or sell the medical cannabis to a licensed processor; and engage
23 in any related activities that are necessary for the operation, such as possessing,
24 storing, and transporting the medical cannabis.

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1 (b) A licensed producer may not plant, grow, cultivate, or harvest medical
2 cannabis for personal, family, or household use.

3 **(6) PROCESSORS.** (a) A licensed processor may obtain medical cannabis from a
4 licensed producer; process the medical cannabis into usable cannabis or individual
5 cannabis plants; transfer samples of the usable cannabis or individual cannabis
6 plants to a registered laboratory; package and label the usable cannabis or individual
7 cannabis plants; transfer or sell the usable cannabis or individual cannabis plants
8 to a licensed dispensary; and engage in any related activities that are necessary for
9 the operation, such as possessing, storing, and transporting the usable cannabis or
10 individual cannabis plants.

11 (b) Before distributing medical cannabis to a licensed dispensary, a licensed
12 processor shall provide samples of each type of cannabis plant and usable cannabis
13 that it processes to a registered laboratory to test for mold, fungus, pesticides, and
14 other contaminants and may not distribute medical cannabis that tests positive for
15 mold, fungus, pesticides, or other contaminants if the contaminants or the level of
16 contaminants is identified by the laboratory as being potentially unsafe to an
17 individual's health.

18 **(7) DISPENSARIES.** (a) A licensed dispensary may obtain packaged, labeled
19 medical cannabis from a licensed processor; dispense the medical cannabis according
20 to the provisions of this section; and engage in any related activities that are
21 necessary for the operation, such as possessing, storing, and transporting the
22 medical cannabis.

23 (b) A licensed dispensary may dispense medical cannabis only to a person who
24 presents a valid registry identification card.

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1 (c) The department shall determine which and how many applicants for a
2 dispensary license receive a license on the basis of all of the following:

3 1. Convenience to treatment teams and the preferences of treatment teams.

4 2. The ability of the applicant to provide to treatment teams a sufficient amount
5 of medical cannabis.

6 3. The experience the applicant has running a nonprofit organization or a
7 business.

8 4. The preferences of the governing bodies with jurisdiction over the area in
9 which the applicants are located.

10 5. The ability of the applicant to keep records confidential and maintain a safe
11 and secure facility.

12 6. The ability of the applicant to abide by the prohibitions under sub. (3) (b).

13 **(8) LABORATORIES.** The department shall register entities as medical cannabis
14 testing laboratories. The department may not register a laboratory if any principal
15 officer or board member of the entity has any financial interest in a licensee or an
16 applicant for a license under this section. A registered laboratory may obtain
17 samples of medical cannabis from a licensed processor; test and certify the
18 tetrahydrocannabinol content of the medical cannabis and whether the medical
19 cannabis contains any contaminants; and engage in any related activities that are
20 necessary for the operation, such as possessing, storing, and transporting the
21 medical cannabis. Registered laboratories shall perform the following services:

22 (a) Testing medical cannabis for potency and for mold, fungus, pesticides, and
23 other contaminants.

24 (b) Researching findings related to medical cannabis, including findings that
25 identify potentially unsafe levels of contaminants.

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1 (c) Providing training to persons who hold registry identification cards,
2 treatment teams, and persons employed by licensees on all of the following:

3 1. The safe and efficient cultivation, harvesting, packaging, labeling, and
4 distribution of medical cannabis.

5 2. Security and inventory accountability procedures.

6 3. The most recent research on medical cannabis.

7 **(9) CONFIDENTIALITY.** The department may disclose to a law enforcement
8 agency only information necessary to verify that a licensee has a valid license issued
9 under this section, an entity is complying with rules promulgated under sub. (11), or
10 a laboratory is registered under sub. (8).

11 **(10) INSPECTIONS.** The department may inspect, without prior notice, the
12 premises of an applicant, licensee, or registered laboratory and any records required
13 to be retained by a licensee or registered laboratory.

14 **(11) RULES.** (a) The department shall promulgate rules to administer and
15 enforce this section. Rules promulgated under this subsection shall be designed to
16 promote and prioritize producers, processors, and dispensaries that are small, local
17 organizations.

18 (b) When promulgating rules under this subsection, the department may, as
19 necessary, use the procedure under s. 227.24 to promulgate emergency rules.
20 Notwithstanding s. 227.24 (1) (a) and (3), when promulgating emergency rules under
21 this subsection, the department is not required to provide evidence that
22 promulgating a rule under this subsection as an emergency rule is necessary for the
23 preservation of the public peace, health, safety, or welfare and is not required to
24 provide a finding of emergency for a rule promulgated under this subsection.
25 Notwithstanding s. 227.24 (1) (c) and (2), initial emergency rules and subsequent

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1 emergency rules promulgated under this subsection remain in effect until the date
2 on which permanent rules take effect. Notwithstanding s. 227.24 (1) (e) 1d. and 1g.,
3 for emergency rules promulgated under this subsection, the department is not
4 required to prepare a statement of scope of the rules or to submit the proposed rules
5 in final draft form to the governor for approval.

6 **SECTION 18.** 101.123 (1) (h) (intro.) of the statutes is amended to read:

7 101.123 (1) (h) (intro.) “Smoking” means burning or holding, or inhaling or
8 exhaling smoke from, any of the following items containing tobacco or cannabis:

9 **SECTION 19.** 102.43 (9) (e) of the statutes is amended to read:

10 102.43 (9) (e) The employee’s employment with the employer has been
11 suspended or terminated due to misconduct, as defined in s. 108.04 (5), or substantial
12 fault, as defined in s. 108.04 (5g) (a), by the employee connected with the employee’s
13 work, subject to s. 108.04 (5m).

14 **SECTION 20.** 106.50 (1m) (h) of the statutes is amended to read:

15 106.50 (1m) (h) “Discriminate” means to segregate, separate, exclude, or treat
16 a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r)
17 because of sex, race, color, sexual orientation, disability, religion, national origin,
18 marital status, or family status;; status as a victim of domestic abuse, sexual assault,
19 or stalking; whether the person holds, or has applied for, a registry identification
20 card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as
21 defined in s. 146.44 (1) (h), or is or has been a member of a treatment team, as defined
22 in s. 961.01 (20t); lawful source of income;; age; or ancestry.

23 **SECTION 21.** 108.04 (5m) of the statutes is created to read:

24 108.04 (5m) USE OF MEDICAL CANNABIS. (a) In this subsection:

25 1. “Medical cannabis” has the meaning given in s. 94.57 (1) (f).

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

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

3 (b) Notwithstanding sub. (5), “misconduct,” for purposes of sub. (5), does not
4 include any of the following:

5 1. A positive test for cannabis components or metabolites, in the absence of
6 other actions or conduct that constitutes misconduct under sub. (5). This subdivision
7 applies only with respect to an employee with a valid written certification and a valid
8 registry identification card.

9 2. A violation of the employer’s policy concerning the use of cannabis, if all of
10 the following apply:

11 a. The employee was using medical cannabis in accordance with a valid written
12 certification.

13 b. The employee held a valid registry identification card.

14 c. The employee did not use or possess medical cannabis on the employer’s
15 premises or during working hours.

16 d. The use did not impair the individual’s ability to adequately perform the
17 job-related responsibilities of that individual’s employment.

18 (c) Notwithstanding sub. (5g), “substantial fault,” for purposes of sub. (5g), does
19 not include any of the following:

20 1. A positive test for cannabis components or metabolites, in the absence of
21 other acts or omissions that constitute substantial fault under sub. (5). This
22 subdivision applies only with respect to an employee with a valid written
23 certification and a valid registry identification card.

24 2. A violation of the employer’s policy concerning the use of cannabis, if all of
25 the following apply:

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1 a. The employee was using medical cannabis in accordance with a valid written
2 certification.

3 b. The employee held a valid registry identification card.

4 c. The employee did not use or possess medical cannabis on the employer's
5 premises or during working hours.

6 d. The use did not impair the individual's ability to adequately perform the
7 job-related responsibilities of that individual's employment.

8 **SECTION 22.** 111.32 (15) of the statutes is created to read:

9 111.32 (15) "Use of a lawful product off the employer's premises during
10 nonworking hours" includes the use of medical cannabis, as defined in s. 94.57 (1) (f),
11 off the employer's premises during nonworking hours but only if such use is in
12 accordance with a valid written certification, as defined in s. 146.44 (1) (h), and the
13 use is by an individual who holds a valid registry identification card, as defined in
14 s. 146.44 (1) (g).

15 **SECTION 23.** 111.34 (1) (c) of the statutes is created to read:

16 111.34 (1) (c) 1. Except as provided in subd. 2., refusing to hire or employ,
17 barring, suspending, or terminating an individual, or discriminating against an
18 individual in promotion, in compensation, or in terms, conditions, or privileges of
19 employment, based on the individual's use of medical cannabis, as defined in s. 94.57
20 (1) (f), if such use is in accordance with a valid written certification, as defined in s.
21 146.44 (1) (h), and the individual holds a valid registry identification card, as defined
22 in s. 146.44 (1) (g).

23 2. Subdivision 1. does not apply if any of the following applies:

24 a. The employee uses or possesses medical cannabis on the employer's premises
25 or during working hours.

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1 b. The use impairs the individual's ability to undertake adequately the
2 job-related responsibilities of that individual's employment.

3 c. The refusal, bar, suspension, termination, or discrimination is necessary for
4 the employer to avoid losing a monetary or licensing-related benefit under federal
5 law or regulations.

6 **SECTION 24.** 111.35 (2) (e) of the statutes is amended to read:

7 111.35 (2) (e) Conflicts with any federal or state statute, rule or regulation.
8 This paragraph does not apply with respect to any conflict between the use of medical
9 cannabis described in s. 111.32 (15) and violations concerning marijuana or
10 tetrahydrocannabinols under 21 USC 841 to 865.

11 **SECTION 25.** 111.35 (2) (f) of the statutes is created to read:

12 111.35 (2) (f) In the case of use of medical cannabis described in s. 111.32 (15),
13 would result in the employer losing a monetary or licensing-related benefit under
14 federal law or regulations.

15 **SECTION 26.** 146.44 of the statutes is created to read:

16 **146.44 Medical cannabis registry program. (1) DEFINITIONS.** In this
17 section:

18 (a) "Applicant" means a person who is applying for a registry identification card
19 under sub. (2) (a) or (ac).

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

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

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

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

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

4 1. Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
5 the presence of human immunodeficiency virus, antigen or nonantigenic products of
6 human immunodeficiency virus, or an antibody to human immunodeficiency virus,
7 Crohn’s disease, a hepatitis C virus infection, Alzheimer’s disease, amyotrophic
8 lateral sclerosis, nail-patella syndrome, Ehlers-Danlos syndrome, post-traumatic
9 stress disorder, or the treatment of these conditions.

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

11 3. A chronic or debilitating disease or medical condition or the treatment of
12 such a disease or condition that causes cachexia, severe pain, severe nausea,
13 seizures, including those characteristic of epilepsy, or severe and persistent muscle
14 spasms, including those characteristic of multiple sclerosis.

15 4. Any other medical condition or any other treatment for a medical condition
16 designated as a debilitating medical condition or treatment in rules promulgated by
17 the department under s. 961.436 (5).

18 (c) “Medical cannabis” has the meaning given in s. 94.57 (1) (f).

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

21 (cp) “Practitioner” means a person licensed as a physician, as defined in s.
22 448.01 (5), a physician assistant, or an advanced practice nurse prescriber certified
23 under s. 441.16 (2).

24 (d) “Primary caregiver” means a person who has agreed to help a qualifying
25 patient use or acquire medical cannabis and who has a registry identification card.

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

5 1. The person’s practitioner has explained the potential risks and benefits of
6 using medical cannabis to the person and to a parent, guardian, or person having
7 legal custody of the person.

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

10 a. Allow the person to use medical cannabis.

11 b. Serve as a primary caregiver for the person.

12 c. Manage the person’s use of medical cannabis.

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

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

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

18 1. The statement indicates that, in the practitioner’s professional opinion, the
19 person has or is undergoing a debilitating medical condition or treatment and the
20 potential benefits of using medical cannabis would likely outweigh the health risks
21 for the person.

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

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

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1 **(1m)** PRACTITIONER RESTRICTIONS. (a) No practitioner may provide himself or
2 herself or any member of his or her family with a written certification for submission
3 with an application under sub. (2).

4 (b) No practitioner who provides a written certification under this section may
5 have a financial interest in any way connected to a person or entity that produces,
6 processes, dispenses, or tests cannabis.

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

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

12 2. A written certification.

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

15 4. A registration fee in an amount determined by the department but not to
16 exceed \$150, except that for an applicant who is a recipient of medical assistance
17 under subch. IV of ch. 49, is receiving benefits under the federal social security
18 disability insurance program under 42 USC 423 or the federal supplemental security
19 income program under 42 USC 1381, or is a veteran, the fee shall be \$50.

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

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

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

3 3. A registration fee of \$250.

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

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

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

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

16 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue an
17 applicant a registry identification card within 5 days after approving the application
18 under sub. (3). Unless voided under sub. (5) (b) or (c) or revoked under rules
19 promulgated under sub. (7) (d), a registry identification card expires 2 years from the
20 date of issuance. A registry identification card shall contain all of the following:

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

22 1. The registrant.

23 2. Each primary caregiver, if the registrant is a qualifying patient.

24 3. Each qualifying patient, if the registrant is a primary caregiver.

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

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1 (c) A photograph of the registrant.

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

3 **(4m)** ANNUAL FEE. Primary caregivers shall pay an annual fee of \$250.

4 **(5)** ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult
5 registrant shall notify the department of any change in the registrant's name and
6 address. An adult registrant who is a qualifying patient shall notify the department
7 of any change in his or her practitioner, of any significant improvement in his or her
8 health as it relates to his or her debilitating medical condition or treatment, and if
9 a primary caregiver stops helping the registrant use or acquire medical cannabis.
10 A registrant who is a primary caregiver shall notify the department if the registrant
11 becomes a primary caregiver for an additional qualifying patient and shall include
12 with the notice a copy of a written certification or copy of a registration identification
13 card for each additional qualifying patient.

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

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

23 (c) If a qualifying patient's registry identification card becomes void under par.
24 (b), the registry identification card for each of the qualifying patient's primary

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1 caregivers with regard to that qualifying patient is void. The department shall send
2 written notice of this fact to each such primary caregiver.

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

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

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

10 **(7) RULES.** The department shall promulgate rules that do all of the following:

11 (a) Create a form for an application under sub. (2).

12 (b) Specify how the department will verify under sub. (3) the information
13 submitted under sub. (2).

14 (bm) Specify how photographs under sub. (4) (c) must be taken and the
15 requirements for such photographs.

16 (c) Specify how and under what circumstances registry identification cards
17 may be renewed.

18 (d) Specify how and under what changed circumstances a registry
19 identification card may be revoked.

20 (e) Specify under what circumstances an applicant whose application is denied
21 may reapply.

22 (f) Ensure that out-of-state registry identification cards are valid only if all of
23 the following apply:

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1 1. The person holding the out-of-state registry identification card has been
2 diagnosed with or is undergoing a debilitating medical condition or treatment that
3 has been approved by the jurisdiction that issued the card.

4 2. The out-of-state registry identification card allows for the use of medical
5 cannabis by the person who holds the card, the card is valid in the jurisdiction in
6 which it was provided, and the person who holds the card is a resident of that
7 jurisdiction.

8 3. The person who holds the out-of-state registry identification card has not
9 been a resident of Wisconsin for a period longer than a period the department
10 determines would allow the person to apply for a registry identification card in
11 Wisconsin.

12 (g) Create guidelines for issuing registry identification cards, and for obtaining
13 and distributing medical cannabis, to persons under the care of the department who
14 have a debilitating medical condition or treatment.

15 **SECTION 27.** 234.29 of the statutes is amended to read:

16 **234.29 Equality of occupancy and employment.** The authority shall
17 require that occupancy of housing projects assisted under this chapter be open to all
18 regardless of sex, race, religion, or sexual orientation;; status as a victim of domestic
19 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
20 person holds, or has applied for, a registry identification card, as defined in s. 146.44
21 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h),
22 or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or creed,
23 and that contractors and subcontractors engaged in the construction of economic
24 development or housing projects, shall provide an equal opportunity for

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1 employment, without discrimination as to sex, race, religion, sexual orientation, or
2 creed.

3 **SECTION 28.** 289.33 (3) (d) of the statutes is amended to read:

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

22 **SECTION 29.** 349.02 (2) (b) 4. of the statutes is amended to read:

23 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or
24 66.0107 (1) (bm).

25 **SECTION 30.** 450.03 (1) (em) of the statutes is created to read:

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1 450.03 (1) (em) Any person acting within the scope of a valid medical cannabis
2 producer, processor, or dispensary license under s. 94.57.

3 **SECTION 31.** 450.03 (1) (ep) of the statutes is created to read:

4 450.03 (1) (ep) An individual who plants, grows, cultivates, or harvests no more
5 than 12 cannabis plants if the individual is any of the following:

6 1. A qualifying patient, as defined in s. 146.44 (1) (e), who is taking the actions
7 to provide medical cannabis for his or her own use.

8 2. A primary caregiver, as defined in s. 146.44 (1) (d), who is taking the actions
9 to provide medical cannabis for his or her qualifying patient.

10 **SECTION 32.** 450.07 (1) of the statutes is amended to read:

11 450.07 (1) Except as provided under ~~sub.~~ subs. (1m) and (1s), no person may
12 engage in manufacturing in this state unless the person obtains a manufacturer's
13 license from the board. For the issuance of a license under this subsection, the
14 applicant shall pay the initial credential fee determined by the department under s.
15 440.03 (9) (a).

16 **SECTION 33.** 450.07 (1s) of the statutes is created to read:

17 450.07 (1s) (a) No license under this section is required for a person acting
18 within the scope of a valid medical cannabis producer, processor, or dispensary
19 license under s. 94.57.

20 (b) No license under this section is required for an individual who plants, grows,
21 cultivates, or harvests no more than 12 cannabis plants if the individual is any of the
22 following:

23 1. A qualifying patient, as defined in s. 146.44 (1) (e), who is taking the actions
24 to provide medical cannabis for his or her own use.

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1 2. A primary caregiver, as defined in s. 146.44 (1) (d), who is taking the actions
2 to provide medical cannabis for his or her qualifying patient.

3 **SECTION 34.** 450.071 (1) of the statutes is renumbered 450.071 (1) (a) and
4 amended to read:

5 450.071 (1) (a) ~~No~~ Except as provided in par. (b), no person may engage in the
6 wholesale distribution of a prescription drug in this state without obtaining a license
7 from the board for each facility from which the person distributes prescription drugs.

8 (b) 1. The board shall exempt from the licensure requirement under this section
9 a manufacturer that distributes prescription drugs or devices manufactured by the
10 manufacturer from licensing and other requirements under this section to the extent
11 the license or requirement is not required under federal law or regulation, unless the
12 board determines that it is necessary to apply a requirement to a manufacturer.

13 **SECTION 35.** 450.071 (1) (b) 2. and 3. of the statutes are created to read:

14 450.071 (1) (b) 2. No license under this section is required for a person acting
15 within the scope of a valid medical cannabis producer, processor, or dispensary
16 license under s. 94.57.

17 3. No license under this section is required for an individual who plants, grows,
18 cultivates, or harvests no more than 12 cannabis plants if the individual is any of the
19 following:

20 a. A qualifying patient, as defined in s. 146.44 (1) (e), who is taking the actions
21 to provide medical cannabis for his or her own use.

22 b. A primary caregiver, as defined in s. 146.44 (1) (d), who is taking the actions
23 to provide medical cannabis for his or her qualifying patient.

24 **SECTION 36.** 767.41 (5) (am) (intro.) of the statutes, as affected by 2021
25 Wisconsin Act 37, is amended to read:

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1 767.41 (5) (am) (intro.) Subject to pars. (bm) ~~and~~, (c), and (d), in determining
2 legal custody and periods of physical placement, the court shall consider all facts
3 relevant to the best interest of the child. The court may not prefer one parent or
4 potential custodian over the other on the basis of the sex or race of the parent or
5 potential custodian. Subject to pars. (bm) ~~and~~, (c), and (d), the court shall consider
6 all of the following factors, which are not necessarily listed in order of importance,
7 in making its determination:

8 **SECTION 37.** 767.41 (5) (d) of the statutes is created to read:

9 767.41 (5) (d) The court may not consider as a factor in determining the legal
10 custody of a child whether a parent or potential custodian holds, or has applied for,
11 a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject
12 of a written certification, as defined in s. 146.44 (1) (h), or is or has been a qualifying
13 patient, as defined in s. 146.44 (1) (e), or a primary caregiver, as defined in s. 146.44
14 (1) (d), unless the parent or potential custodian's behavior creates an unreasonable
15 danger to the child that can be clearly articulated and substantiated.

16 **SECTION 38.** 767.451 (5m) (a) of the statutes is amended to read:

17 767.451 (5m) (a) Subject to pars. (b) ~~and~~, (c), and (d), in all actions to modify
18 legal custody or physical placement orders, the court shall consider the factors under
19 s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its determination in
20 a manner consistent with s. 767.41.

21 **SECTION 39.** 767.451 (5m) (d) of the statutes is created to read:

22 767.451 (5m) (d) In an action to modify a legal custody order, the court may not
23 consider as a factor in making a determination whether a parent or potential
24 custodian holds, or has applied for, a registry identification card, as defined in s.
25 146.44 (1) (g), is or has been the subject of a written certification, as defined in s.

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1 146.44 (1) (h), or is or has been a qualifying patient, as defined in s. 146.44 (1) (e), or
2 a primary caregiver, as defined in s. 146.44 (1) (d), unless the parent or potential
3 custodian's behavior creates an unreasonable danger to the child that can be clearly
4 articulated and substantiated.

5 **SECTION 40.** 961.01 (5m) of the statutes is created to read:

6 961.01 (5m) "Debilitating medical condition or treatment" has the meaning
7 given in s. 146.44 (1) (b).

8 **SECTION 41.** 961.01 (12v) of the statutes is created to read:

9 961.01 (12v) "Lockable, enclosed facility" means an enclosed indoor or outdoor
10 area that is capable of being locked or that requires a security device and that permits
11 access only by a member of a treatment team.

12 **SECTION 42.** 961.01 (14c) of the statutes is created to read:

13 961.01 (14c) "Maximum authorized amount" means 12 live cannabis plants
14 and 3 ounces of usable cannabis.

15 **SECTION 43.** 961.01 (14g) of the statutes is created to read:

16 961.01 (14g) "Medical cannabis" has the meaning given in s. 94.57 (1) (f).

17 **SECTION 44.** 961.01 (17k) of the statutes is created to read:

18 961.01 (17k) "Out-of-state registry identification card" has the meaning given
19 in s. 146.44 (1) (cm).

20 **SECTION 45.** 961.01 (19m) of the statutes is created to read:

21 961.01 (19m) "Primary caregiver" has the meaning given in s. 146.44 (1) (d).

22 **SECTION 46.** 961.01 (20hm) of the statutes is created to read:

23 961.01 (20hm) "Qualifying patient" has the meaning given in s. 146.44 (1) (e).

24 **SECTION 47.** 961.01 (20ht) of the statutes is created to read:

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

3 **SECTION 48.** 961.01 (20t) of the statutes is created to read:

4 961.01 **(20t)** “Treatment team” means a qualifying patient and his or her
5 primary caregivers.

6 **SECTION 49.** 961.01 (21f) of the statutes is created to read:

7 961.01 **(21f)** “Usable cannabis” means cannabis leaves or flowers but does not
8 include seeds, stalks, or roots or any ingredients combined with the leaves or flowers.

9 **SECTION 50.** 961.01 (21t) of the statutes is created to read:

10 961.01 **(21t)** “Written certification” has the meaning given in s. 146.44 (1) (h).

11 **SECTION 51.** 961.436 of the statutes is created to read:

12 **961.436 Medical cannabis defense. (1)** A member of a qualifying patient’s
13 treatment team has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for
14 manufacturing, or possessing with intent to manufacture, tetrahydrocannabinols if
15 all of the following apply:

16 (a) The manufacture or possession is by the treatment team to use medical
17 cannabis.

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

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

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

24 **(2)** A member of a qualifying patient’s treatment team has a defense to
25 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or

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1 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
2 member of the treatment team if all of the following apply:

3 (a) The distribution, delivery, or possession is by the treatment team to use
4 medical cannabis.

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

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

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

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

14 1. The possession or attempted possession is by the treatment team to use
15 medical cannabis.

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

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

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

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

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

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

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

8 a. A school bus or a public transit vehicle.

9 b. The person's place of employment.

10 c. Public or private school premises.

11 d. A juvenile correctional facility.

12 e. A jail or adult correctional facility.

13 f. A public park, beach, or recreation center.

14 g. A youth center.

15 **(4)** For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
16 registry identification card, a valid out-of-state registry identification card, or a
17 written certification is presumptive evidence that the element under sub. (1) (a), (2)
18 (a), or (3) (a) 1. has been satisfied.

19 **(5)** Notwithstanding s. 227.12 (1), any person may petition the department of
20 health services to promulgate a rule to designate a medical condition or treatment
21 as a debilitating medical condition or treatment. The department of health services
22 shall promulgate rules providing for public notice of and a public hearing regarding
23 a petition, with the public hearing providing persons an opportunity to comment
24 upon the petition. After the hearing, but no later than 180 days after the submission
25 of the petition, the department of health services shall approve or deny the petition.

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1 The department of health service's decision to approve or deny a petition is subject
2 to judicial review under s. 227.52.

3 **SECTION 52.** 961.55 (8) (c), (d) and (e) of the statutes are created to read:

4 961.55 (8) (c) A valid registry identification card or a valid out-of-state registry
5 identification card.

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

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

9 **SECTION 53.** 961.555 (2) (am) 6. of the statutes is amended to read:

10 961.555 (2) (am) 6. The property is contraband that is subject to forfeiture
11 under s. 961.55 ~~(6)~~, (6m), or, unless the defendant invokes a defense under s. 961.436
12 or 961.5755, under s. 961.55 (6) or (7).

13 **SECTION 54.** 961.555 (2r) of the statutes is created to read:

14 961.555 (2r) MEDICAL USE DEFENSE. (a) In an action to forfeit property seized
15 under s. 961.55, the person who was in possession of the property when it was seized
16 has a defense to the forfeiture of the property if any of the following applies:

17 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
19 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

20 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
21 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
22 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
23 (2), or (3) (a) or 961.5755 (1) (a) or (2).

24 (b) The owner of property seized under s. 961.55 who is raising a defense under
25 par. (a) shall do so in the answer to the complaint that he or she serves under sub.

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1 (2) (b). If a property owner raises such a defense in his or her answer, the state must,
2 as part of the burden of proof specified in sub. (3), prove that the facts constituting
3 the defense do not exist.

4 **SECTION 55.** 961.56 (1) of the statutes is amended to read:

5 961.56 (1) ~~It~~ Except as provided in s. 961.555 (2r) (b) and except for any
6 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
7 state to negate any exemption or exception in this chapter in any complaint,
8 information, indictment or other pleading or in any trial, hearing or other proceeding
9 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
10 upon the person claiming it.

11 **SECTION 56.** 961.5755 of the statutes is created to read:

12 **961.5755 Medical cannabis defense in drug paraphernalia cases. (1) (a)**
13 Except as provided in par. (b), a member of a treatment team has a defense to
14 prosecution under s. 961.573 (1) if he or she uses, or possesses with the primary
15 intent to use, drug paraphernalia to use medical cannabis.

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

18 **(2)** A member of a treatment team has a defense to prosecution under s. 961.574
19 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
20 manufactures with intent to deliver to another member of his or her treatment team
21 drug paraphernalia, knowing that it will be primarily used by the treatment team
22 to use medical cannabis.

23 **(3)** For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry
24 identification card, a valid out-of-state registry identification card, or a written
25 certification is presumptive evidence that the defense is valid.

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1 **SECTION 57.** 968.072 of the statutes is created to read:

2 **968.072 Medical cannabis; arrest and prosecution. (1) DEFINITIONS.** In
3 this section:

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

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

6 (b) “Medical cannabis” has the meaning given in s. 94.57 (1) (f).

7 (bm) “Out-of-state registry identification card” has the meaning given in s.
8 146.44 (1) (cm).

9 (bt) “Practitioner” has the meaning given in s. 146.44 (1) (cp).

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

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

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

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

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

15 **(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL CANNABIS.** Unless s.
16 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient’s treatment team
17 may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h), or (3g)
18 (e) if all of the following apply:

19 (a) The member manufactures, distributes, delivers, or possesses
20 tetrahydrocannabinols for the use of medical cannabis by the treatment team.

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

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

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

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

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

9 1. The member uses, or possesses with the primary intent to use, drug
10 paraphernalia only to use medical cannabis.

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

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

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

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

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

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

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1 knowing that it will be primarily used by the treatment team to use medical
2 cannabis.

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

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

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

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

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

16 (b) An employee of a licensee under s. 94.57 or of a laboratory registered under
17 s. 94.57 (8) may not be arrested and such employee may not be subject to prosecution,
18 denied any right or privilege, or penalized in any manner for any good faith action
19 under s. 94.57.

20 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
21 information to a law enforcement officer in an attempt to avoid arrest or prosecution
22 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
23 961.574 (1), or 961.575 (1) may be fined not more than \$500.

24 **SECTION 58.** 968.12 (6) of the statutes is created to read:

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

8 **SECTION 59.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
9 read:

10 968.19 (1) ~~Property~~ Except as provided in sub. (2), property seized under a
11 search warrant or validly seized without a warrant shall be safely kept by the officer,
12 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
13 necessary for the purpose of being produced as evidence on any trial.

14 **SECTION 60.** 968.19 (2) of the statutes is created to read:

15 968.19 (2) A law enforcement agency that has seized a live cannabis plant is
16 not responsible for the plant's care and maintenance.

17 **SECTION 61.** 968.20 (1j) of the statutes is created to read:

18 968.20 (1j) (a) In this subsection:

19 1. "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

20 2. "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

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

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

4 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
6 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
7 (2), or (3) (a) or 961.5755 (1) (a) or (2).

8 **SECTION 62. Nonstatutory provisions.**

9 (1) NOTIFICATION OF RULE MAKING. If the department of agriculture, trade and
10 consumer protection or the department of health services promulgates rules under
11 s. 94.57 (11) or s. 146.44 (2) (b) or (7) before the first day of the 13th month beginning
12 after the effective date of this subsection, the department that promulgates the rules
13 shall provide notice to the legislative reference bureau of the effective date of those
14 rules, and the legislative reference bureau shall publish a notice of that date in the
15 Wisconsin Administrative Register under s. 35.93 (2).

16 **SECTION 63. Effective dates.** This act takes effect on the day after publication,
17 except as follows:

18 (1) The treatment of s. 94.57 (2) to (10) takes effect on the first day of the 13th
19 month beginning after publication or on the date specified in the notice under
20 SECTION 62 (1) of this act, whichever is sooner.

21 (2) The treatment of s. 146.44 (1m) to (6) takes effect on the first day of the 13th
22 month beginning after publication or on the date specified in the notice under
23 SECTION 62 (1) of this act, whichever is sooner.

24

(END)