STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

Council Members: Please bring your calendars to schedule future meetings.
https://dwd.wisconsin.gov/uibola/uiac/

MEETING

Date: May 22, 2019

Time: 10:00 a.m. – 4:00 p.m.

Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the April 18, 2019 Council Meeting
3. Worker Misclassification Quarterly Report – Mike Myszewski
4. Department Update
5. Report on the Unemployment Insurance Reserve Fund – Tom McHugh
6. Financial Outlook Report – Rob Usarek
7. Update on Legislation
8. Research Request
9. Correspondence
10. Department Proposals for Agreed Bill
11. Labor and Management Proposals for Agreed Bill
12. Agreed Bill Timeline
13. Future Meeting Dates

14. Adjourn

Notice:

- The Council may not address all agenda items or follow the agenda order.
- The Council may take up action items at a time other than that listed.
- The Council may discuss other items, including those on any attached lists.
- The Council members may attend the meeting by telephone.
- The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- This location is accessible to persons with disabilities. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- Today's meeting materials will be available online at 10:00 a.m. at https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

April 18, 2019

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members Present: Janell Knutson (Chair), Scott Manley, Susan Quam, Mike Gotzler, John Mielke, Earl Gustafson, Di Ann Fechter, Shane Griesbach, and Terry Hayden.

Department Staff Present: Mark Reihl (UI Division Administrator), Amy Banicki, Andrew Rubsam, Jim Moe, Pamela McGillivray (Chief Legal Counsel), Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Pam James, Jill Moksouphanh, Ryan Farrell, Karen Schultz, Tom Mund, Maureen McShane and Robin Gallagher.

Members of the Public Present: Eric Wilson (Deputy Attorney General, Department of Justice), Randy Schneider (Director, Criminal Litigation Unit, Department of Justice), Brian Dake (Wis. Independent Businesses, Inc.), Chris Reader (Wisconsin Manufacturers & Commerce), Victor Forberger (Wisconsin UI Clinic), Anita Krasno (General Counsel, Labor & Industry Review Commission), BJ Dernbach (Office of Representative Warren Petryk), Tyler Longsine (Office of Representative James Edming), Mike Duchek (Legislative Reference Bureau), Margit Kelley (Legislative Council), Mary Beth George (Office of Representative Sinicki).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:00 a.m. under Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson recognized Eric Wilson and Randy Schneider of the Department of Justice, Mary Beth George of Rep. Sinicki's Office, BJ Dernbach of Rep. Petryk's Office, Tyler Longsine of Rep. Edming's Office, Margit Kelly of Legislative Council, Mike Duchek of Legislative Reference Bureau, and DWD Chief Legal Counsel Pam McGillivray.

2. Approval of Minutes of the March 21, 2019 Council Meeting

Motion by Mr. Griesbach, second by Mr. Manley, to approve the meeting minutes without correction. The motion carried unanimously.

3. Department Update

Ms. Knutson stated that due to a scheduling conflict, the Worker Misclassification report, which is typically presented on a quarterly basis, will be rescheduled. In addition, the scope statement approved at the last meeting (changing SIC codes to NAICS codes) has been submitted to the Governor's Office and is awaiting approval.

4. Governor's Executive Order #20 Relating to the Creation of a Joint Enforcement Task Force on Payroll Fraud and Employee Misclassification

Mr. Reihl presented Governor Evers' Executive Order #20 that creates a joint enforcement task force on payroll fraud and worker misclassification. Approximately 10 years ago, a task force on worker misclassification was created and a report was issued that focused on employer fraud and contained recommendations. The creation of this task force is timely as worker misclassification impacts everyone in Wisconsin and some of the recommendations of the previous task force were ignored. Employers with workers that are incorrectly identified as independent contractors have a competitive advantage, do not pay into unemployment insurance contributions and lack worker's compensation policies. Workers who are incorrectly classified lack protections such as overtime pay and minimum wage requirements, worker's compensation coverage and the ability to file for UI benefits. Immigrant workers are especially exploited and in some cases, there is evidence of "labor trafficking."

The task force will be composed of the department Secretary or designee, the Attorney General or designee, Department of Revenue, Office of Commissioner of Insurance, Administrators of the Worker's Compensation, Equal Rights and Unemployment Insurance divisions, and other individuals appointed by the Governor, including at least one individual representing workers and one individual from the business community in an industry affected by misclassification, such as construction. The task force is required to report to the Governor on or before March of each year on the accomplishments of the task force and provide recommendations.

Since the creation of the worker classification section, 8,675 workers have been misclassified resulting in about $1.5 million being assessed in UI taxes and interest. This demonstrates there is an existing problem that needs to be addressed.

Mr. Manley supports enforcement against employers intentionally violating the law to gain a dishonest advantage. However, the law is difficult to understand due to different definitions of "independent contractor" as it relates to worker's compensation, unemployment insurance and equal rights. The workplace is evolving where individuals have employment opportunities through smart phone applications; therefore, having uniformity across all divisions with a clear and consistent definition is important.

Mr. Gustafson inquired if worker misclassification is a nationwide problem or mainly in Wisconsin. Ms. Knutson stated it is a nationwide problem, and the penalties for intentional worker misclassification from a previous Agreed Bill apply only to the construction industry. The worker classification section investigates other industries based on information from the Bureau of Tax and Accounting, through investigations that are conducted, or tips that are

received on individual businesses. Mr. Reihl added that states all over the country have been taking action on worker misclassification and have task forces already in place.

Mr. Gotzler supports enforcement against employers that are intentionally gaining a competitive advantage through misclassifying workers. Having different definitions and the difficulty employers experience trying to understand misclassification laws cannot be understated; this includes federal laws. For example, a worker can be found to be an independent contractor under federal law, but found to be an employee under state law. Laws are decades behind as the workforce and labor market have significantly changed. Uniformity and clarity would be welcomed by employers.

Mr. Griesbach appreciates the discussion on this issue and the Council's progressive action on worker misclassification. Seeing this issue firsthand in the construction industry, misclassification is a problem that needs to be fixed. While attending a conference, a trafficked worker from a very egregious situation spoke and highlighted this issue.

5. Financial Outlook Report

Mr. Usarek is unavailable today, so the annual Financial Outlook presentation will be rescheduled. Ms. Knutson stated the Financial Outlook Report is included in the Council packet and contains an overview of the UI financing system, historical information on the Trust Fund and projections for the Trust Fund through the year 2022. This year's report also includes long-run simulations. Recommendations from the Secretary are included in the report for Council consideration.

6. UI Fraud Presentation

Ms. Knutson introduced Deputy Attorney General Eric Wilson and Randy Schneider, Director of the Criminal Litigation Unit with the Wisconsin Department of Justice. Mr. Wilson thanked the Council for the opportunity to speak and their work in advising the department. Mr. Wilson has extensive experience in prosecuting fraud cases, having previously worked as a federal prosecutor in Chicago and as a DOJ prosecutor. The Department of Justice is fully committed to enforcing laws forbidding UI fraud and since January has participated in many meetings with DWD staff.

Mr. Wilson explained the factors considered in determining whether a case is prosecuted by DOJ:

- Facts must be strong enough to prove a conviction beyond a reasonable doubt. The charging decision is based on a standard of probable cause;
- Intent to defraud must be proven;
- The loss amount needs to justify the expenditure of state resources;
- In cases involving individuals, the individual's criminal history or history of defrauding governmental programs;
- In cases involving employers, the employer's enforcement and compliance history;

- Determining if there is an existing civil remedy, for example, is there a civil judgment against the individual or the employer, and if so, are they satisfying it;
- Has the defendant lied to investigators or obstructed the case during the investigation; and,
- No one of these factors is dispositive.

DOJ pledged to work collaboratively with DWD and include the DWD in discussions to determine which cases should be prosecuted; however, recognizing ultimately that DOJ makes the decision to file criminal charges.

Before the administration change in January, most cases prosecuted by DOJ were filed in Dane County circuit court. Moving forward, DOJ will take into consideration where to file charges that may be based on where the employee resides and where the crime occurred. Cases will still be filed in Dane County; however, DOJ will determine the best location to file.

Mr. Manley thanked Mr. Wilson and Mr. Schneider for coming to today's meeting. Regardless if it is an employer engaging in misclassification or an employee fraudulently trying to obtain benefits, no one wants fraud in the system. The job performed by DOJ is important and financially, there are millions of dollars at stake. The department has been able to reduce the dollar amount of fraud in Wisconsin through a variety of factors including a renewed focus on program integrity. In addition, claim activity is significantly lower than five years ago, with 1.5% of all payments being fraudulent overpayments (around $4.9 million last year in fraud over-payments). When claim activity increases, fraud will increase, and enforcing the law adequately will be important.

Mr. Manley inquired if intent is a required element or if there is strict liability in cases involving concealment of income.

Mr. Wilson responded that statute states there must be intent to defraud so it is not a strict liability crime. Determining if a mistake was made and the evidence that determines if there was intent to defraud is important before considering a criminal case.

Mr. Manley followed up by stating there does not seem to be changes from the approach of the current attorney general to prosecute criminal fraud in UI versus the prior attorney general's approach. Mr. Wilson responded that the approaches are different as the mix of cases will change, but not the resources used to prosecute those cases. DOJ is fully committed to working with DWD to enforce laws, and there are many targets that are worthy of prosecution; however, ensuring criminal cases are justified under the factors discussed.

Mr. Griesbach thanked Mr. Wilson and Mr. Schneider for speaking to the Council and appreciates the team effort from DOJ in making decisions and working together to solve this problem.

Mr. Gustafson asked if local media coverage in the area a criminal case is filed would assist in sending the message to the public that crimes are being taken seriously, especially when there are major cases in those counties. Mr. Wilson stated general deterrence is always a factor in how

and when to prosecute criminal cases. The Department of Justice, however, is legally limited to filing charges based on where the crime occurred or Dane County - where DWD is located. Most cases referred to DOJ are out of Milwaukee County, and what had been happening when cases were filed in Dane County, a lot of people were not making court appearances because they could not get to Madison. Ms. Knutson added that the agreement between DOJ and DWD is that all Milwaukee County cases are referred to DOJ and now DOJ will prosecute Dane County and some Brown County cases as well. The rest of the cases referred for prosecution are sent to County District Attorneys.

Mr. Reihl stated if a case does not result in criminal charges, the department will still pursue money that is owed. There are stringent penalties in place for both employers and employees who break the law, even if criminal charges are not filed.

7. Senator Lena Taylor's Bill – Federal Worker Legislation

Ms. Knutson reported that Senator Lena Taylor has been provided information and additional language on the federal worker legislation. A further update will be provided at the next meeting.

8. Research Request

Department's Request for Information

Mr. Rubsam presented the timeline and process when the department requests records from an employer for audit and how it relates to D19-02 (Assessment for Failure to Produce Records). The timeline of actions depends on when an employer responds to the department's request for records. If an employer responds early in the process, additional steps will not need to be taken. An example of department form documents that are sent to the employer was provided to the Council as well as the fiscal estimate for the department proposal. If D19-02 is passed, it would assist in the department's efforts to obtain records from employers when requested or provide a civil penalty for those employers who do not respond.

Mr. Manley expressed concern that the request for information may not provide sufficient time for an employer to respond with the amount of information that is requested by the department. He also stated the amount of information requested is very disruptive to an employer for something that is only possibly being done incorrectly. Mr. Rubsam stated the department works with the employer to get the necessary information and many smaller businesses will not have many of the items requested. Mr. Mielke expressed concern that the amount of information the department is requesting to determine misclassification is too significant. Ms. Knutson stated that USDOL prescribes the information/documents that must be included to be considered an audit for federal purposes. Mr. Hayden added that two-thirds of the items being requested for an audit are typically contained in a digital accounting and payroll system and data is readily available to access. There will always be exceptions where employers have a manual system. Mr. Mielke responded there are approximately 12,500 employers with a payroll under $500,000 in the construction industry that likely do not have a digital program and complying with the request for information can be burdensome.

Mr. Rubsam reiterated that the purpose of the proposal is to have the employer respond to the department's request for information for the department to determine an employer's UI tax liability. Unfortunately, there are employers that are subject to UI law and not providing the department with records or paying taxes, resulting in the employers having an unfair advantage over those who do comply with the law.

Projected Fiscal Impact for D19-16 (Repeal Waiting Week) and D19-18 (Increase Maximum Weekly Benefit Rate to $406)

Ms. Knutson presented the projected fiscal impact for D19-16 (Repeal Waiting Week) and D19-18 (Increase the Maximum Weekly Benefit Rate to $406) and fiscal impact using the combination of the two proposals with a 10-year average level of claims experience. An additional column was added to show the percentage of UI benefits paid. The annual impact to increasing the maximum weekly benefit rate to $406 is 6.5% of total UI benefits paid and repealing the waiting week is 5% of total UI benefits paid. The average annual duration during the 10-year period is 15.5 weeks compared to the average duration of 12.7 weeks in 2018. The average UI claim level during the 10-year period results in an expected 218,709 first pays compared to 106,770 first pays in 2018.

9. Department Proposals for Agreed Bill

Mr. Rubsam stated fiscal estimates are included for D19-08 (Appropriation Revisions and Technical Corrections) and D19-09 (Creation of Administrative Fund). There is no expected Trust Fund impact for either of these proposals. Ms. Knutson presented a chart of all department proposals to assist the Council in tracking the progress of department proposals and what is left to be acted on.

10. Labor and Management Proposals for Agreed Bill

To stay on schedule for the Agreed Bill cycle, Ms. Knutson suggested that Labor and Management proposals be exchanged at the May meeting. The department is proposing to schedule an additional meeting in May to assist the Council in discussions and deliberations.

11. Agreed Bill Timeline

Ms. Knutson stated the Council is currently behind schedule to present the Agreed Bill to the Legislature by the end of the year due to the cancelled February meeting and introducing the department proposals later than anticipated.

12. Future Meeting Dates

The next meeting is scheduled for May 16. A survey to all Council members has been sent out to determine a second May meeting date.

13. Adjourn

Motion by Mr. Hayden, second by Mr. Manley to go into closed caucus under Wis. Stat. §19.85 (1) (ee) to deliberate agenda items and adjourn from caucus. The motion carried unanimously, and the Council adjourned to caucus at 11:20 a.m.

UNEMPLOYMENT INSURANCE

ADVISORY COUNCIL ACTIVITIES REPORT

2017-2018

STATE OF WISCONSIN

DWD

Department of Workforce Development

UCD-16480-P (R.05/2019)

DWD
Department of Workforce Development

May 15, 2019

To: The Honorable Tony Evers and Members of the Wisconsin State Legislature:

The Department of Workforce Development is pleased to present the following report on the activities of Wisconsin's Unemployment Insurance Advisory Council for the 2017-2018 period.

The Legislature created the Unemployment Insurance Advisory Council to advise the Legislature and the Department of Workforce Development on matters concerning Wisconsin's Unemployment Insurance (UI) program, and to recommend changes to improve the state's UI laws. Recommendations of the Council reflect interests of employers who pay contributions and workers who depend on unemployment benefits in times of economic hardship. Most of the reforms described in this report are the result of the Council's negotiations, agreement, and recommendations on ways to improve Wisconsin's UI system. Examples include:

- Implementing provisions to reduce UI fraud and prevent UI benefit overpayments;
- Revising statutes to enhance the department's ability to collect UI debts;
- Allowing electronic delivery of certain UI documents;
- Implementing a program integrity assessment to fund UI program integrity efforts without increasing employer taxes.

The Council's diverse opinions, perspectives, and knowledge of the program are key to ensuring a balanced representation of the interests of both workers and employers is maintained in Wisconsin's UI program.

The Council and the Department of Workforce Development look forward to continuing to work with the Governor and the Legislature to further enhance Wisconsin's UI program and continue providing effective and efficient services to both UI claimants and employers.

Sincerely,

Caleb Frostman, Secretary
Department of Workforce Development

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INTRODUCTION

The following report summarizes the deliberations of the Unemployment Insurance Advisory Council and provides the position of the Council concerning each proposed change to Unemployment Insurance law during 2017-2018. The report is prepared by the Secretary of the Department of Workforce Development and provided to the Governor and Legislative Leadership as required by Wis. Stat. § 16.48(1)(b).

The Council studies potential law changes on an ongoing basis, providing a balanced forum where the interests of both employees and employers are considered.

ABOUT THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

The Legislature created the Council in 1932 to advise the Department of Workforce Development and the Legislature on policy matters concerning the development and administration of UI law. For over 87 years, the Council has acted as a catalyst for labor and management representatives to work together to ensure stability in the UI system and collaborate on positive changes to enhance the program.

The Council's primary responsibilities are to:[1]

(1) Advise the department in its administration of UI law;

(2) Report its views on pending legislation affecting the UI program to legislative committees;

(3) Submit its recommended changes to Wisconsin's UI law to the Wisconsin State Legislature.

The Council studies potential law changes on an ongoing basis, providing a balanced forum where the interests of both employees and employers are considered. The Council's negotiated recommendations to change the UI law are presented to the Legislature as an "Agreed Bill" for the Legislature's consideration.

The Legislature has traditionally recognized the value of the Council process in bringing together the two groups most affected by the UI program, employees and employers. The Legislature’s support of the Council process has helped to ensure Wisconsin's UI law continues to conform to federal requirements, which is required for Wisconsin to receive the federal funding necessary to administer the UI program and for employers to receive federal tax credits.

The Council regularly communicates with the Legislature regarding specific issues that affect the UI program. Members of the Legislature are encouraged to attend Council meetings and address the Council on their proposed changes to UI law before introduction.

[1] The Council responsibilities are specified in Wis. Stat. § 108.14(5)(a).

COUNCIL MEMBERSHIP

The Secretary of the Department of Workforce Development appoints Council members to six-year terms. The Council is composed of five management members representing the interests of employers and five labor members representing the interests of employees. One management representative is required by state law to be an owner of a small business or represent an association that is primarily composed of small businesses. In addition to these voting members, a permanent classified employee of the department serves as the nonvoting chairperson for the Council.[2]

Employer Representatives (Management Members)

Michael Gotzler – Special Counsel, Littler Mendelson; Board Member, Wisconsin Association of Staffing Services: term expires June 30, 2023

Earl Gustafson – Vice President, Energy Forestry & Human Resource, Wisconsin Paper Council: term expires June 30, 2019

Susan Quam (Small Business Representative) – Executive Vice President, Wisconsin Restaurant Association: term expires June 30, 2023

Scott M. Manley – Senior Vice President of Government Relations, Wisconsin Manufacturers and Commerce: term expires August 31, 2021

John Mielke – President, Associated Builders & Contractors of Wisconsin, Inc.: term expires August 31, 2021

Employee Representatives (Labor Members)

Sally Feistel – Sub-District Director, United Steel Workers, District 2: term expires May 31, 2020

Dennis Delie – Secretary-Treasurer, Wisconsin State AFL-CIO: term through August 31, 2021

Shane Griesbach – Business Representative, International Union of Operating Engineers Local 139: term expires June 30, 2023

Terry Hayden – President, Wisconsin Pipe Trades Association: term expires August 31, 2021

Di Ann Fechter – Business Representative, International Association of Machinists & Aerospace Workers: term expires November 13, 2024

Chairperson (non-voting)

Janell Knutson – Director, Bureau of Legal Affairs, UI Division, Department of Workforce Development

[2] Wis. Stat. § 15.227(3)

COUNCIL PROCEDURES

Business Meetings

Council members negotiate proposed changes to Wisconsin's UI law in biennial cycles, as well as review and approve administrative rules drafted by the department and unemployment-related legislation proposed by lawmakers throughout the biennium. Council meetings typically occur monthly and provide labor and management the opportunity to exchange ideas and opinions so the interests of both employers and employees are represented and considered. Council meetings are open to the public and are noticed in accordance with Wisconsin's open meetings law. Management and Labor members are permitted under state law to hold separate, closed caucus sessions to discuss potential law changes.[3]

The Council Chairperson leads the Council meetings and presents department proposals to change UI law to the Council for review. The department provides an analysis of each proposal that typically includes a description of the suggested law change, the rationale, the history and background of current law, potential federal conformity issues relevant to the proposal, the policy and fiscal effects, and the administrative feasibility and effect of the proposal. Council members deliberate proposals presented by the department, their own proposals, and any unemployment-related bills pending in the Legislature. A vote of seven of the ten Council members is required for the Council to act on any matter.[4]

The proposals brought forward for inclusion in the UIAC Agreed Bill are developed based on input from several sources including: employer representatives, labor representatives, the Legislature, and the department.

Public Hearing

The proposals brought forward for inclusion in the UIAC Agreed Bill are developed based on input from several sources including: employer representatives, labor representatives, the Legislature, and the department. The Council also holds a statewide public hearing each biennium for members of the public to provide their recommendations on possible changes to the UI program.

Before the public hearing, the Council invites the public to submit written comments on suggested UI law changes to the department via letter or a dedicated email box. The department compiles all the written and verbal comments submitted during the comment period and at the public hearing and presents them to the Council. The Council considers the public comments as they develop potential reform ideas for the upcoming biennium. The Council held a public hearing in November 2016 and factored the input received from the public into many of the UI law changes included in the most recent UIAC Agreed Bill.

[3]Closed caucus sessions are permissible under Wis. Stat. § 19.85(1)(ee).

[4]Wis. Stat. § 108.14(5)(ag)

LAW CHANGES ENACTED DURING THE REPORTING PERIOD

Four bills that relate to the UI program were enacted into law during the 2017-2018 biennium: 2017 Wis. Act 59, the 2015-2017 Budget Act; 2017 Wis. Act 147, related to increased criminal penalties for unemployment insurance fraud; 2017 Wis. Act 157, the UIAC Agreed Bill with various UI law changes; and 2017 Wis. Act 370, related to waivers from work search and work registration requirements for certain unemployment insurance claimants. The permanent administrative rules regarding pre-employment drug testing and drug treatment became effective in 2017.

Law Changes Related to UI Benefits Contained in the UIAC Agreed Bill

Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay

A claimant who conceals work on an UI benefit claim is totally ineligible for benefits for that week. But, under prior law, a claimant who conceals holiday, vacation, termination, or sick pay on a weekly claim could still be eligible for partial UI benefits for that week.

2017 Wis. Act 157 (UIAC Agreed Bill) amended the statute to provide that concealment of holiday pay, vacation pay, sick pay or termination/dismissal pay on a weekly benefit claim results in total ineligibility for the week for which the claimant concealed the pay. This is consistent with the treatment for concealment of work and wages.

Ineligibility for Failure to Provide Information

Under prior law, a claimant became ineligible for UI benefits for the week in which the claimant failed to answer the department's eligibility questions, and any subsequent weeks, until the claimant responded to the department's request. A claimant who later answered the department's eligibility questions became retroactively eligible for benefits beginning with the week in which they failed to answer the questions (if otherwise eligible).

The UIAC Agreed Bill provided that claimants who fail to answer eligibility questions raised by the department are ineligible beginning with the week involving the eligibility issue rather than the week in which the claimant fails to answer the department's question.

Amendments to Drug Testing Statutes

2015 Wis. Act 55 (2015-2017 Budget Act) created Wis. Stat. §§ 108.04(8)(b) and 108.133, which requires the department, by administrative rule, to create programs related to the drug screening, testing and treatment for certain individuals applying for or claiming UI benefits.

As required by 2015 Wis. Act 55, the department created a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. If a reported individual is receiving UI benefits, the individual is presumed to have failed, without good cause, to accept suitable work and is ineligible for UI benefits. The individual may maintain eligibility for UI benefits if the individual enrolls in and complies with a state-sponsored substance abuse treatment program, completes a job skills assessment, and meets all other program requirements.

The other drug testing provision created by the 2015-2017 Budget Act directs the department to promulgate rules identifying occupations for which drug testing is regularly conducted in the state in order to implement screening and drug testing of UI applicants whose only suitable work is in an occupation that regularly drug tests. If the individual's only suitable work is in an occupation

that regularly drug tests and the drug screen indicates there is a reasonable suspicion of unlawful drug use, the individual must pass a drug test in order to be eligible for UI benefits. Like the pre-employment drug testing program, an individual who fails a drug test may maintain eligibility for UI benefits if they enroll in and comply with a substance abuse treatment program and meet all other program requirements.

The 2017 UIAC Agreed Bill revised certain aspects of the drug testing statutes, including:

- Expanding the confidentiality protections to all aspects of the drug testing program, rather than only to records relating to enrollment in a substance abuse treatment program;
- Limiting employers' civil liability under state law for submission of pre-employment drug testing information to the department;
- Amending terminology in Wisconsin's occupational drug testing statute to refer to "applicants" instead of "claimants" to clearly conform state law to the federal definition;
- Confirming that the department shall pay the reasonable costs of drug testing under the occupational drug testing program; and,
- Amending the appropriation statute so that unused drug screening and testing funds be transferred to the UI Program Integrity Fund at the end of each biennium.

Law Changes Related to UI Benefits Not Contained in the UIAC Agreed Bill

Increased Criminal Penalties for Unemployment Insurance Fraud

Increased criminal penalties for individuals who intentionally commit acts of unemployment benefit fraud became effective in April 2018. Previously, the criminal penalty for knowingly making a false statement or representation to obtain UI benefits was an unclassified misdemeanor with a fine of $100 to $500, up to 90 days in jail, or both, for each false statement. 2017 Wis. Act 147 revised the criminal penalties for UI fraud to a structured scale that increases with the dollar amount of benefits fraudulently obtained and made the penalties for UI fraud consistent with those of other types of theft. The revised penalties are as follows:

If the value of UI benefits fraudulently obtained is:	Claimant is guilty of:	Maximum criminal penalty:
$2,500 or less	Class A Misdemeanor	Up to $10,000 fine or imprisonment up to 9 months, or both
More than $2,500, up to $5,000	Class I Felony	Up to $10,000 fine or imprisonment up to 3.5 years, or both
More than $5,000, up to $10,000	Class H Felony	Up to $10,000 fine or imprisonment up to 6 years, or both
More than $10,000	Class G Felony	Up to $25,000 fine or imprisonment up to 10 years, or both

2017 Wis. Act 147 also specified that a UI benefit fraud case involving more than one violation may be prosecuted as a single crime.

Work Search and Work Registration Waivers[5]

Unemployment insurance claimants are required to register for work and complete at least four work search actions each week, unless the requirements are waived. The provisions relating to work search and work registration waivers were approved by the Council and Wis. Admin. Code DWD §§ 126.03 and 127.02 became effective in June 2015. 2017 Wis. Act 370, passed during the December 2018 extraordinary session, codified in statute the work search and work registration waivers contained in the administrative rules and specified that the department may modify, eliminate or establish additional waivers from the work registration and work search requirements only if necessary to comply with federal law or as specifically allowed under federal law.

2017 Wis. Act 370 also codified the requirement that claimants must verify their compliance with the work registration and work search requirements, unless waived.

Law Changes Related to UI Tax / Collections Contained in the UIAC Agreed Bill

Fiscal Agent Joint and Several Liability

2017 Wis. Act 157 aligned state law with federal law so a private agency serving as a fiscal agent, or contracting with a fiscal intermediary to serve as a fiscal agent, may be found jointly and severally liable with respect to the unemployment tax liability of a domestic employer. The potential liability will provide an incentive for fiscal agents to correctly report wages for employers and to properly pay UI taxes.

Personal Liability for Tax: Repeal of the Ownership Requirement

2017 Wis. Act 157 amended the tax personal liability statute to repeal the requirement that an officer, employee, member, manager, partner, or other responsible person must have at least a 20 percent ownership interest to hold the person personally liable for willfully failing to file reports or payments.

State Tax Refund Intercept for Tax Recovery

2017 Wis. Act 157 permits the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers (employers and personally liable individuals) who owe debts to the department. The department previously only intercepted such amounts for claimants who owe overpayments and penalties.

Levy Non-compliance Penalty

2017 Wis. Act 157 modified an existing penalty for third parties who refuse to comply with a department levy, increasing the penalty from 25 percent to 50 percent of the amount of the debt owed. Under Act 157, the penalties will be deposited into the UI Program Integrity Fund.

Secured Liens for Benefit Overpayments & Bankruptcy

2017 Wis. Act 157 created an unrecorded lien against any person who owes the department a debt (under prior law, this provision only applied to employers).

Warrant Notice Changes

2017 Wis. Act 157 codified existing department practice by requiring the department to give 15 days' notice to a debtor before issuing a warrant.

Sale of Seized Property by Online Auction and Sale

2017 Wis. Act 157 provided that the department may sell property seized to satisfy debts in any manner that will bring the highest net bid or price, including through online auction or sales.

[5] As of this publication, the validity of Act 370 is the subject of litigation.

Program Administration

Work-Share Provisions

In lieu of layoffs, employers may reduce employees' work hours under a work-share program that results in a pro rata payment of unemployment benefits. The 2017 UIAC Agreed Bill made various changes to the work-share statutes to confirm the department's interpretation of current law. The changes include:

- Specifying that vacation, holiday, termination, and sick pay in a work-share program will be treated as hours worked for the purposes of calculating an employee's work-share benefit amount. This is similar to the current law for regular benefits;
- Providing that the department shall disregard discrepancies of less than 15 minutes of work reported. This is similar to the disregard of $2 of wages earned in a week for regular benefits; and,
- Specifying that missed work available for work-share employees will be treated as hours worked; this is similar for claimants applying for regular benefits. This will ensure that work-share employees are not paid greater benefits when missing work with a work-share employer.

Various Minor and Technical Changes

The 2017 UIAC Agreed Bill contained several minor and technical changes to unemployment statutes including:

- Updating outdated terminology or phrasing, correcting cross-references, and updating references to federal law;
- Clarifying the steps that appeal tribunals (ALJs) should take when parties fail to appear at administrative hearings;
- Allowing for optional electronic delivery of certain department determinations and notices; and,
- Updating statutes to replace references to checks with "issuance of payment" (less than 1 percent of unemployment benefits were being paid by paper check).

Pre-Employment Drug Testing Permanent Rules

To comply with the requirements of 2015 Wis. Act 55, the department promulgated rules with the approval of the Council to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. The rules established the parameters for which a reported individual would be denied UI benefits or could maintain benefit eligibility by complying with a state-sponsored substance abuse treatment program. The permanent administrative rule in Wis. Admin. Code DWD ch. 131 became effective May 1, 2017.

Other Deliberations of the Council

2015 Wis. Act 334 created a new program integrity assessment of 0.01 percent and reduced employer taxes by a corresponding amount, resulting in no tax increase for Wisconsin employers. The proceeds of this assessment are deposited into the UI Program Integrity Fund to be used by the department for program integrity activities.

In September 2017, the Council approved the Secretary's request to implement the 0.01 percent program integrity assessment for 2018; and again, in September 2018 for 2019. The proceeds allow the department to continue anti-fraud and other program integrity efforts without raising taxes. The Council recognizes the value of the assessment as it relates to the department's program integrity efforts and has unanimously approved this request every year since the assessment was created.

ISSUES PENDING WITH THE COUNCIL

Various Administrative Rule Changes

In 2017, the department began the process to promulgate a rule to amend Wisconsin Administrative Code DWD chapters 100 through 150. The changes are minor and technical in nature and designed to align administrative rules with current federal laws and state statutes; update or delete obsolete or incorrect cross-references; and clarify language.

The department held a public hearing related to the minor and technical changes to Wis. Admin. Code DWD chapters 100 to 150 in July 2018. The Council approved the final draft rule in September 2018 and it was submitted to the Legislature. Germane modifications were submitted to the Legislature for committee review in February 2019. The proposed rule was then referred to the Joint Committee for Review of Administrative Rules.

It is anticipated the rule will be effective June 1, 2019.

UIAC Agreed Bill for 2019-2020 Session

The Council began the agreed-bill process for the upcoming biennium by holding a public hearing on November 15, 2018, via video conference with hearing locations at Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Superior and Wausau. The Council also accepted written comments from the public submitted to the department by mail or through a dedicated email box. Five people spoke at the public hearing and 21 written comments were received on a wide range of topics.

The input provided by the public during the comment period was presented to the Council at the first UIAC meeting following the public hearing. The Council will take these comments into account as they begin work on law change proposals for inclusion in the next UIAC Agreed Bill.

Occupational Drug Testing Rules

Under 2015 Wis. Act 55, the department must, by administrative rule, create a program for drug testing certain UI applicants. The department will determine whether an applicant's only suitable work is in an occupation that regularly conducts drug testing. If an applicant's only suitable work is in an occupation that regularly conducts drug testing, the department will screen the applicant to determine whether there is a reasonable suspicion the applicant engaged in the unlawful use of controlled substances. An applicant with a positive screening result must submit to a drug test to remain eligible for UI benefits. An applicant who fails a drug test under Wis. Stat. § 108.133 without evidence of a valid prescription may remain eligible for UI benefits if the applicant enrolls in and complies with a drug treatment program, completes a job skills assessment, and otherwise meets all program requirements.

There are two parts to the state Occupational Drug Testing Program:

1. Drug testing UI applicants whose only suitable work is in an "occupation that regularly conducts drug testing," as identified in the regulations issued by USDOL.
2. Drug testing UI applicants whose only suitable work is in an occupation for which drug testing is regularly conducted in this state as identified in administrative rules promulgated by the department.

The U.S. Department of Labor promulgated regulations that established the list of occupations that regularly conduct drug testing; however, U.S. House Joint Resolution 42, signed by President Trump in March 2017, nullified the regulations.

USDOL issued a Notice of Proposed Rule Making relating to occupational drug testing for UI applicants on November 5, 2018. USDOL has not yet promulgated final regulations.

CONCLUSION

Since its inception, the Council process has fostered collaboration among those most invested in the UI program and developed reforms that ensure the integrity of the program and the solvency of the UI Trust Fund. This collaboration has ensured that UI benefits remain available to workers who lose their job through no fault of their own.

The Council anticipates completing deliberations on the next UIAC Agreed Bill later this year and looks forward to continuing its positive working relationship with the Legislature and the Governor.

STATE OF WISCONSIN

DWD

Department of Workforce Development

201 E. Washington Ave.
Madison, WI 53707
608-266-3131|dwd.wisconsin.gov

UI Reserve Fund Highlights

May 22, 2019

1. Benefit payments through April 2019 declined by $13.0 million or 6.7% when compared to benefits paid through April 2018.

Benefits Paid	**2019 YTD*** *(in millions)*	**2018 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Regular UI Paid	$180.8	$193.8	($13.0)	(6.7%)

2. Tax receipts through April 2019 declined by $23.9 million or 6.7% when compared to taxes paid through April 2018. Since both tax years were rated in Schedule D, any change reflects the improvement of individual employers' tax rates.

Tax Receipts	**2019 YTD*** *(in millions)*	**2018 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Tax Receipts	$330.9	$354.8	($23.9)	(6.7%)

3. The April 2019 Trust Fund ending balance was nearly $1.9 billion, an increase of 15.1% when compared to the same time last year. A balance of $1.2 billion on June 30 will mean that Schedule D will continue for next year.

UI Trust Fund Balance	**2019 YTD*** *(in millions)*	**2018 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Cash Analysis Statement	$1,893.2	$1,644.3	$248.9	15.1%

4. Interest earned on the Trust Fund is received quarterly. Interest for the first quarter of 2019 was $10.1 million compared to $8.1 million for the same period last year. The U.S. Treasury annualized interest rate for this quarter is 2.4%. The Trust Fund is currently earning about $124,000 in daily interest.

UI Trust Fund Interest	**2019 YTD*** *(in millions)*	**2018 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Interest Earned	$10.1	$8.1	$2.0	24.7%

*All calendar year-to-date (YTD) numbers are based on the April 30 Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended April 30, 2019

Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED April 30, 2019

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	8,789,668.72	9,058,157.38
U.I. BENEFIT ACCOUNTS	(453,016.56)	(1,734,540.14)
U.I. TRUST FUND ACCOUNTS (1) (2)	1,898,978,784.84	1,648,662,409.90
TOTAL CASH	1,907,315,437.00	1,655,986,027.14
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	72,081,605.49	80,449,876.42
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(35,491,062.67)	(38,230,179.40)
NET BENEFIT OVERPAYMENT RECEIVABLES	36,590,542.82	42,219,697.02
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	29,970,663.81	33,565,106.21
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(18,469,337.16)	(19,741,384.41)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	11,501,326.65	13,823,721.80
OTHER EMPLOYER RECEIVABLES	22,661,904.38	23,065,193.29
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(7,831,178.42)	(9,169,510.37)
NET OTHER EMPLOYER RECEIVABLES	14,830,725.96	13,895,682.92
TOTAL ACCOUNTS RECEIVABLE	62,922,595.43	69,939,101.74
TOTAL ASSETS	1,970,238,032.43	1,725,925,128.88
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	27,124,964.60	29,437,772.79
OTHER LIABILITIES	13,882,606.14	11,695,601.83
FEDERAL BENEFIT PROGRAMS	372,938.82	424,973.79
CHILD SUPPORT HOLDING ACCOUNT	22,229.00	49,174.00
FEDERAL WITHHOLDING TAXES DUE	130,668.00	205,948.00
STATE WITHHOLDING TAXES DUE	730,937.00	715,926.00
DUE TO OTHER GOVERNMENTS (7)	2,390,184.77	2,332,941.83
TOTAL LIABILITIES	44,654,528.33	44,862,338.24
EQUITY:		
RESERVE FUND BALANCE	2,429,171,182.27	2,277,169,602.43
BALANCING ACCOUNT	(503,587,678.17)	(596,106,811.79)
TOTAL EQUITY	1,925,583,504.10	1,681,062,790.64
TOTAL LIABILITIES AND EQUITY	1,970,238,032.43	1,725,925,128.88

1. $1,891,913 of this balance is for administration purposes and is not available to pay benefits.

2. $2,115,424 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. The allowance for uncollectible benefit overpayments is 49.2%. The allowance for uncollectible delinquent employer taxes is 45.4%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.

4. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is $3,724,445. Deferrals for the prior year were $4,711,998..

5. $6,328,988, or 21.1%, of this balance is estimated.

6. $13,432,507 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $13,692,458 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.

7. This balance includes SAFI Payable of $1,432. The 04/30/2019 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $14,631. Total LIfe-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were $9,483,715.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED April 30, 2019

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,720,310,130.25	2,794,896,813.36	2,635,459,959.45
BALANCING ACCOUNT	(1,025,674,381.10)	(1,030,187,761.19)	(1,125,485,495.65)
TOTAL BALANCE	1,694,635,749.15	1,764,709,052.17	1,509,974,463.80
INCREASES:			
TAX RECEIPTS/RFB PAID	188,310,549.85	233,947,264.98	255,162,895.35
ACCRUED REVENUES	(5,115,737.50)	346,619.10	1,274,706.51
SOLVENCY PAID	81,321,094.28	96,954,329.16	99,656,745.39
FORFEITURES	2,913.00	14,951.00	139,828.00
BENEFIT CONCEALMENT INCOME	81,018.28	325,338.57	385,716.18
INTEREST EARNED ON TRUST FUND	0.00	10,075,112.74	8,081,307.57
FUTA TAX CREDITS	2,815.07	10,830.00	9,078.16
OTHER CHANGES	27,617.16	154,991.81	164,792.45
TOTAL INCREASES	264,630,270.14	341,829,437.36	364,875,069.61
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	28,356,525.94	152,600,746.63	164,777,647.88
QUIT NONCHARGE BENEFITS	3,961,314.49	21,527,183.09	22,017,095.83
OTHER DECREASES	65,973.30	371,505.44	240,706.40
OTHER NONCHARGE BENEFITS	1,298,701.46	6,455,550.27	6,751,292.66
TOTAL DECREASES	33,682,515.19	180,954,985.43	193,786,742.77
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,429,171,182.27	2,429,171,182.27	2,277,169,602.43
BALANCING ACCOUNT	(503,587,678.17)	(503,587,678.17)	(596,106,811.79)
TOTAL BALANCE (8) (9) (10)	1,925,583,504.10	1,925,583,504.10	1,681,062,790.64

8. This balance differs from the cash balance related to taxable employers of $1,893,214,829 because of non-cash accrual items.

9. $1,891,913 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

10. $2,115,424 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

05/16/19

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 04/30/19

RECEIPTS	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$188,310,549.85	$233,947,264.98	$255,162,895.35
SOLVENCY	81,321,094.28	96,954,329.16	99,656,745.39
ADMINISTRATIVE FEE	59.43	309.13	444.12
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	1,839,637.37	2,170,285.34	2,126,031.03
UNUSED CREDITS	3,190,599.57	3,486,892.25	3,430,595.76
GOVERNMENTAL UNITS	1,106,562.62	4,176,566.67	4,644,645.13
NONPROFITS	880,714.69	3,315,023.04	3,832,149.89
INTERSTATE CLAIMS (CWC)	422,153.48	1,108,921.62	952,966.65
ERROR SUSPENSE	56,167.58	55,286.53	20,219.97
FEDERAL PROGRAMS RECEIPTS	(228,021.58)	186,032.23	276,235.43
OVERPAYMENT COLLECTIONS	1,718,037.36	7,388,990.67	8,494,639.39
FORFEITURES	2,913.00	14,951.00	139,828.00
BENEFIT CONCEALMENT INCOME	81,018.28	325,338.57	385,716.18
EMPLOYER REFUNDS	(201,178.82)	(1,375,234.49)	(2,023,508.79)
COURT COSTS	52,910.02	182,495.30	201,889.56
INTEREST & PENALTY	375,691.50	1,360,866.76	1,287,079.37
CARD PAYMENT SERVICE FEE	244.21	244.37	0.00
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	113,875.42	514,235.51	559,842.47
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	3,331.11	11,900.00	930.41
SPECIAL ASSESSMENT FOR INTEREST	1,431.66	6,562.37	7,376.76
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	10,075,112.74	8,081,307.57
MISCELLANEOUS	3,299.07	12,728.59	31,262.67
TOTAL RECEIPTS	$279,051,090.10	$363,919,102.34	$387,269,292.31
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	$30,075,459.12	$158,222,648.82	$170,675,022.02
NONPROFIT CLAIMANTS	761,449.88	3,088,983.22	3,621,906.66
GOVERNMENTAL CLAIMANTS	752,934.71	3,809,387.89	4,212,900.92
INTERSTATE CLAIMS (CWC)	358,751.78	1,717,691.88	1,792,263.07
QUITS	3,961,314.49	21,527,183.09	22,017,095.83
OTHER NON-CHARGE BENEFITS	1,372,109.35	6,474,003.90	6,714,613.80
CLOSED EMPLOYERS	(304.75)	(260.75)	1,117.05
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	49,447.73	629,343.26	679,981.15
EX-MILITARY (UCX)	26,300.26	175,180.35	244,145.88
TRADE ALLOWANCE (TRA/TRA-NAFTA)	135,268.00	490,708.97	1,075,825.09
DISASTER UNEMPLOYMENT (DUA)	4,385.00	20,186.00	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(1,224.29)	(4,131.73)	(8,609.17)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(32,707.77)	(117,476.25)	(185,732.02)
FEDERAL EMERGENCY UI (EUC)	(323,663.34)	(1,087,581.42)	(1,489,320.50)
FEDERAL EXTENDED BENEFITS (EB)	(24,154.79)	(81,306.60)	(125,408.25)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(314.84)	(939.59)	(752.40)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(899.41)	(1,496.66)	(1,419.58)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(150.99)	(681.66)	(2,138.48)
INTEREST & PENALTY	348,629.54	1,233,685.78	1,235,607.15
CARD PAYMENT SERVICE FEE TRANSFER	0.00	0.00	0.00
PROGRAM INTEGRITY	240,317.36	812,442.58	831,445.44
SPECIAL ASSESSMENT FOR INTEREST	5,130.71	8,411.76	14,308.57
COURT COSTS	52,656.44	166,571.58	188,533.29
ADMINISTRATIVE FEE TRANSFER	128.43	344.81	398.99
FEDERAL WITHHOLDING	122,828.00	45,928.00	(179,417.00)
STATE WITHHOLDING	1,902,684.89	856,550.80	849,573.23
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	41,661.84	114,151.84	0.00
FEDERAL LOAN REPAYMENTS	(2,815.07)	(10,830.00)	(9,078.16)
TOTAL DISBURSEMENTS	$39,825,222.28	$198,088,699.87	$212,152,862.58
NET INCREASE(DECREASE)	239,225,867.82	165,830,402.47	175,116,429.73
BALANCE AT BEGINNING OF MONTH/YEAR	$1,668,089,569.18	$1,741,485,034.53	$1,480,869,597.41
BALANCE AT END OF MONTH/YEAR	$1,907,315,437.00	$1,907,315,437.00	$1,655,986,027.14

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED April 30, 2019

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$1,657,117,592.79	$1,730,835,304.79	$1,471,761,579.73
INCREASES:			
TAX RECEIPTS/RFB PAID	188,310,549.85	233,947,264.98	255,162,895.35
U.I. PAYMENTS CREDITED TO SURPLUS	81,466,386.65	99,301,302.09	103,031,196.79
INTEREST EARNED ON TRUST FUND	0.00	10,075,112.74	8,081,307.57
FUTA TAX CREDITS	2,815.07	10,830.00	9,078.16
TOTAL INCREASE IN CASH	269,779,751.57	343,334,509.81	366,284,477.87
TOTAL CASH AVAILABLE	1,926,897,344.36	2,074,169,814.60	1,838,046,057.60
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	28,356,525.94	152,600,746.63	164,777,647.88
BENEFITS CHARGED TO SURPLUS	5,284,327.41	28,240,086.96	29,009,094.89
TOTAL BENEFITS PAID DURING PERIOD	33,640,853.35	180,840,833.59	193,786,742.77
SHORT-TIME COMPENSATION EXPENDITURES	41,661.84	114,151.84	0.00
ENDING U.I. CASH BALANCE (11) (12) (13)	1,893,214,829.17	1,893,214,829.17	1,644,259,314.83

11. $1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

12. $284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

13. $2,115,424 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

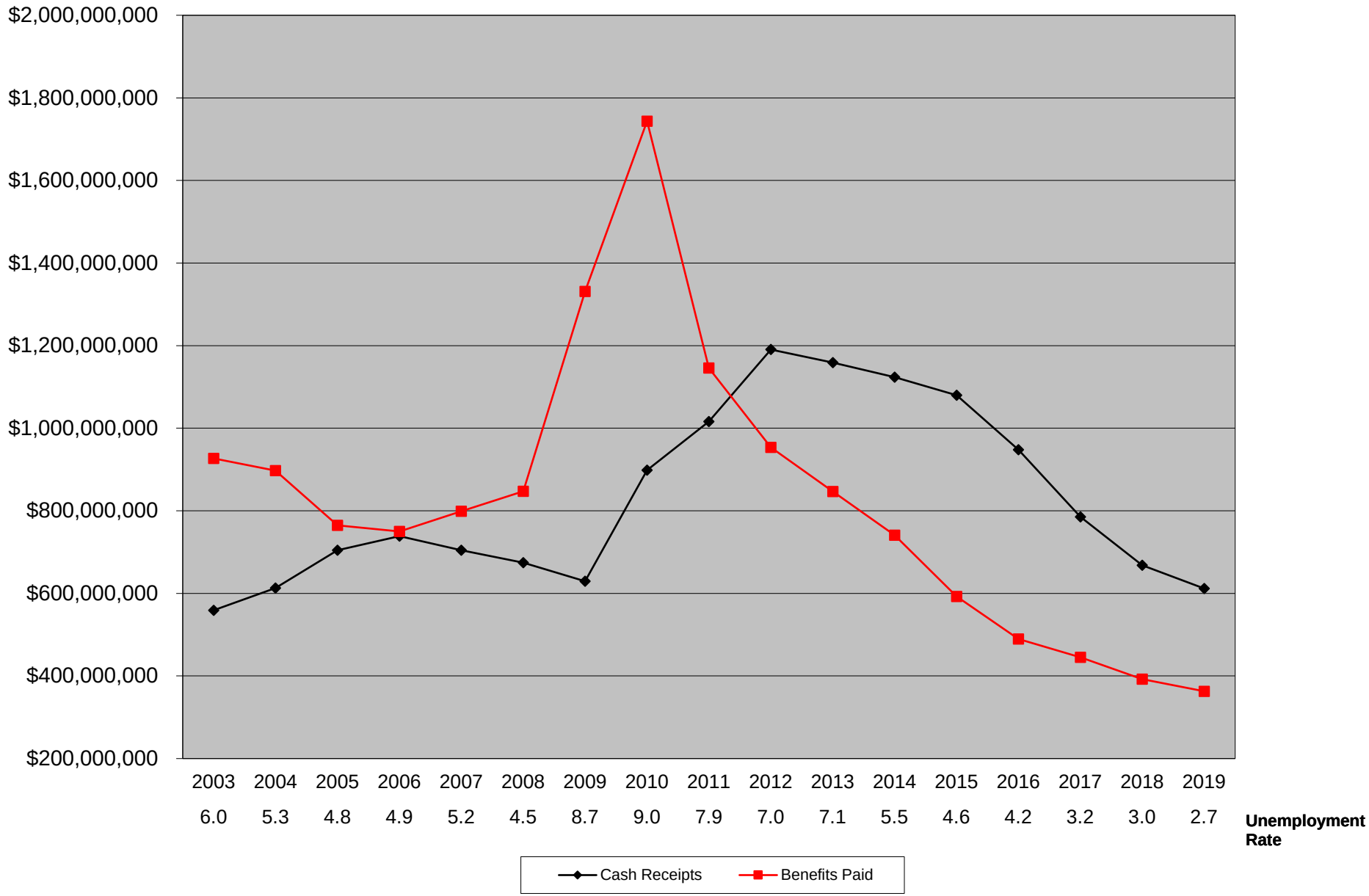
05/16/19

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED April 30, 2019

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($612,114,806.35)	($617,016,324.88)	($715,103,113.34)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	81,321,094.28	96,954,329.16	99,656,745.39
FORFEITURES	2,913.00	14,951.00	139,828.00
OTHER INCREASES	142,379.37	2,332,021.93	3,234,623.40
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	81,466,386.65	99,301,302.09	103,031,196.79
TRANSFERS BETWEEN SURPLUS ACCTS	15,240.78	26,965.75	80,338.11
INTEREST EARNED ON TRUST FUND	0.00	10,075,112.74	8,081,307.57
FUTA TAX CREDITS	2,815.07	10,830.00	9,078.16
TOTAL INCREASES	81,484,442.50	109,414,210.58	111,201,920.63
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	3,961,314.49	21,527,183.09	22,017,095.83
OTHER NON-CHARGE BENEFITS	1,323,009.92	6,712,900.87	6,991,999.06
MISCELLANEOUS EXPENSE	3.00	3.00	0.00
BENEFITS CHARGED TO SURPLUS SUBTOTAL	5,284,327.41	28,240,086.96	29,009,094.89
SHORT-TIME COMPENSATION EXPENDITURES	41,661.84	114,151.84	0.00
BALANCE AT THE END OF THE MONTH/YEAR	(535,956,353.10)	(535,956,353.10)	(632,910,287.60)

05/16/19

Cash Activity Related to Taxable Employers with WI Unemployment Rate
(for all years from May to April)



2019 Financial Outlook: Wisconsin Unemployment Insurance Program

UIAC Meeting
May 22, 2019
Madison, WI

Robert Usarek

Unemployment Insurance Division

Department of Workforce Development

2019 UI Financial Outlook

Overview

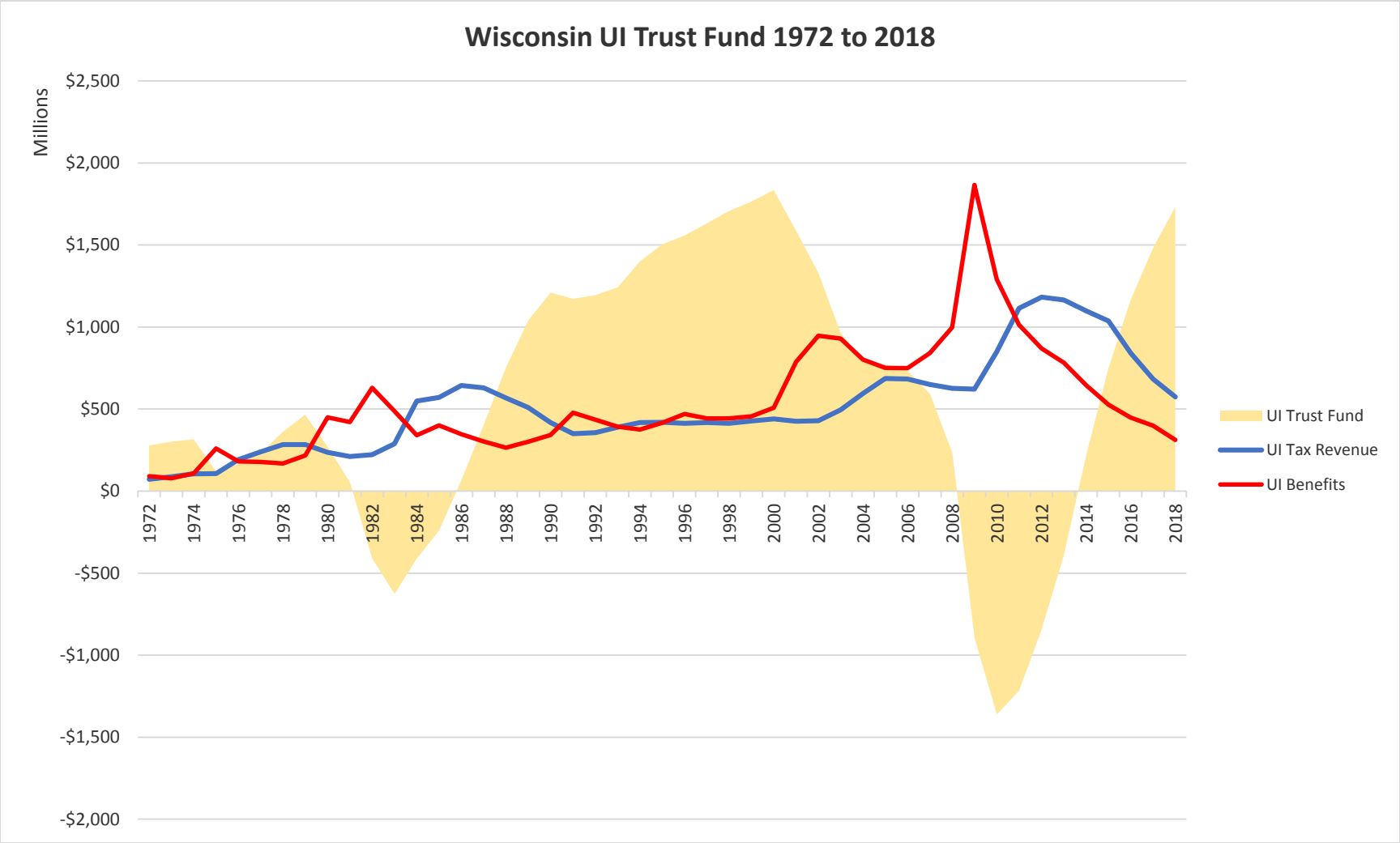
- Introduction
- Review of recent UI Trust Fund activity
- UI Trust Fund projections
- UI Trust Fund long run simulations

2019 UI Financial Outlook: Introduction

- The 2019 *Financial Outlook* of the Wisconsin Unemployment Insurance (UI) program was submitted to the Governor's Office on April 15, 2019 pursuant to Wis. Stat. § 16.48

- The *Financial Outlook* provides background on the Wisconsin UI financing system and projections of the UI Trust Fund

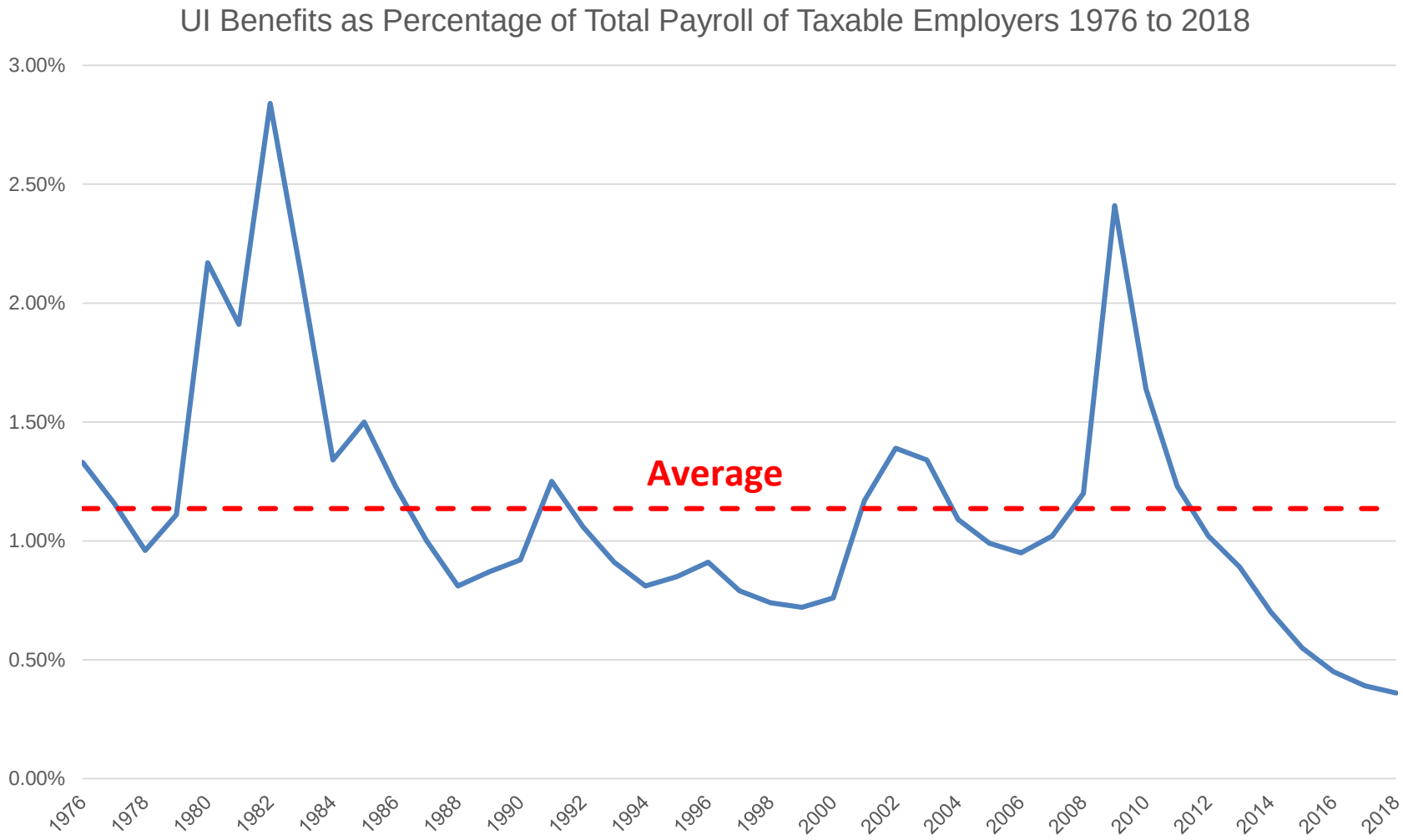
2019 UI Financial Outlook: Review of Recent UI Trust Fund Activity



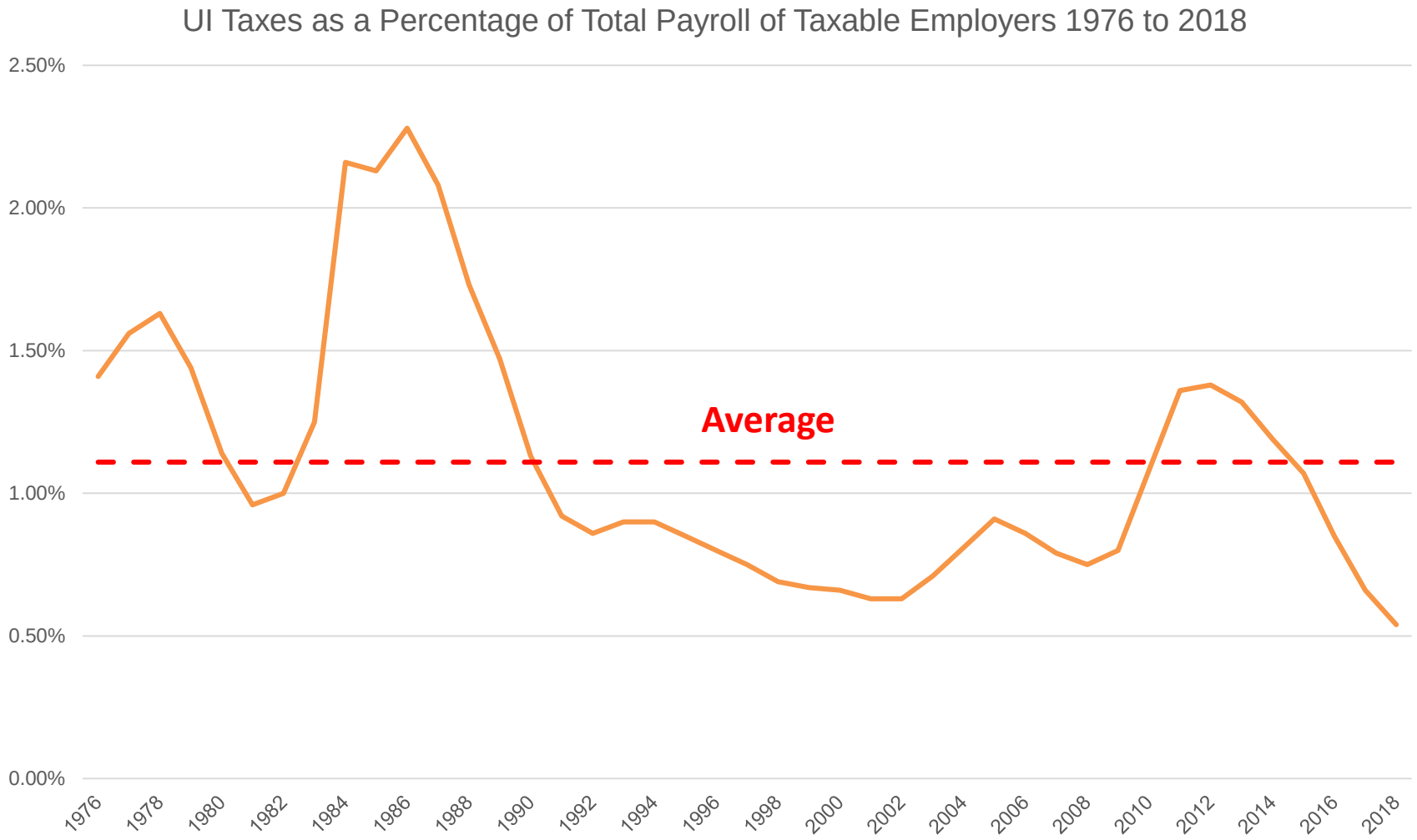
2019 UI Financial Outlook: Review of Recent UI Trust Fund Activity

- The UI Trust Fund has increased over the past two years:
  - At the end of 2016 the UI Trust Fund balance was $1.159 billion
  - At the end of 2018 the UI Trust Fund balance was $1.731 billion
- The main cause for the increase in the UI Trust Fund are historically low UI benefit payments

2019 UI Financial Outlook: Review of Recent UI Trust Fund Activity



2019 UI Financial Outlook: Review of Recent UI Trust Fund Activity



2019 UI Financial Outlook: UI Trust Fund Projections

- There are currently two different risks addressed by the UI Trust Fund projections:
  - Uncertainty regarding if Wisconsin will remain at current historically low levels of UI benefit payments or will return to typical levels of UI benefit payments
  - Cyclical economic risk due to economic growth or shrinkage

2019 UI Financial Outlook: UI Trust Fund Projections

- To illustrate the uncertainty regarding UI benefit payment levels, two different projections are run assuming moderate economic growth:
  - UI benefit payments remain at current historically low levels
  - UI benefit payments return to typical levels
- To illustrate cyclical economic risk, a projection is run assuming UI benefit payments under a recession in 2020

2019 UI Financial Outlook: UI Trust Fund Projections

Scenario 1: UI Benefit Payments Remain at Historically Low Levels

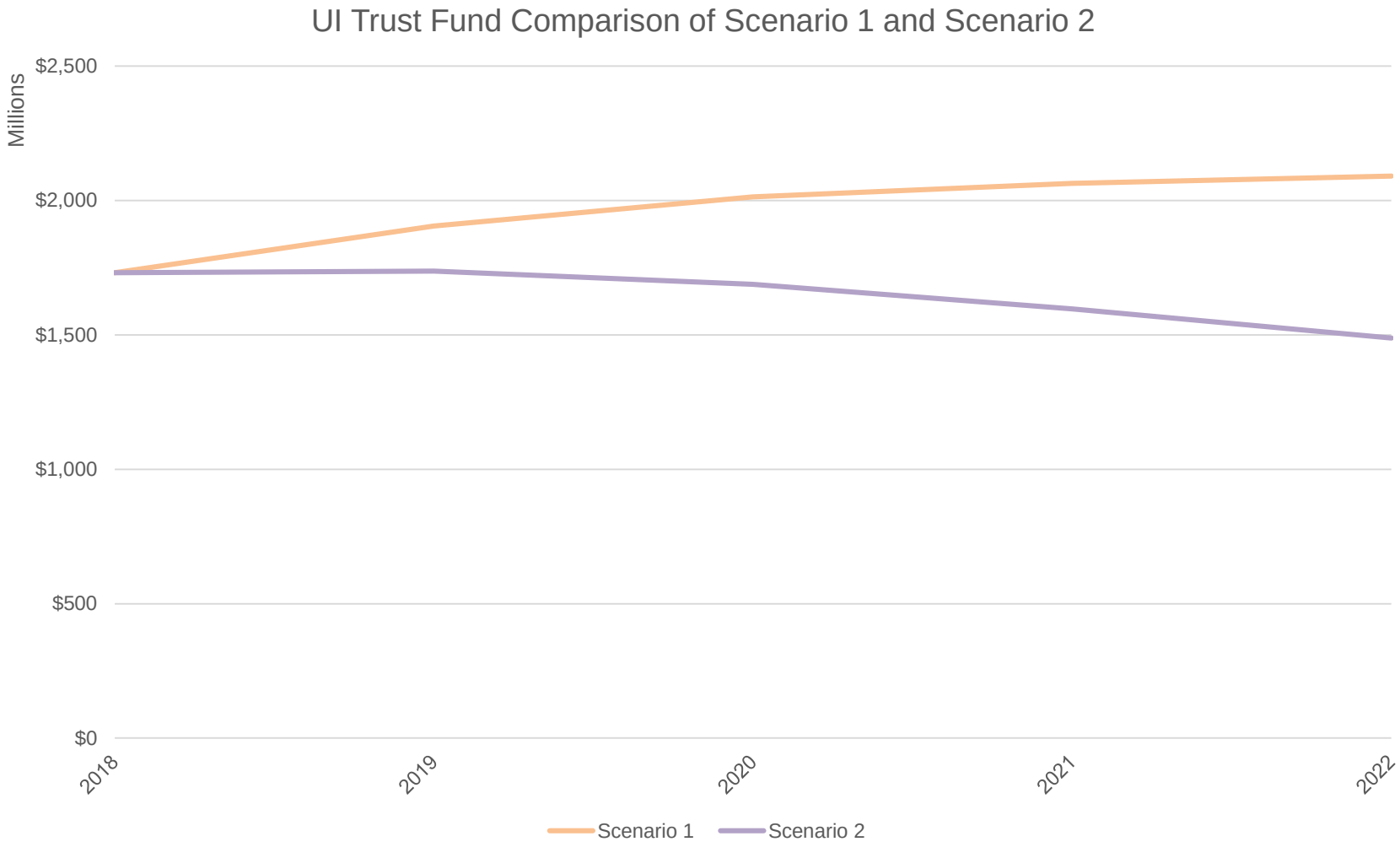
Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
	2018	2019	2020	2021	2022
Opening Unemployment Reserve Fund Balance	$1,472	$1,731	$1,905	$2,024	$2,064
Revenues:					
State Unemployment Revenues (employer taxes)	$598	$498	$462	$455	$467
Interest Income	$37	$45	$49	$51	$52
Total Revenue	$635	$543	$511	$506	$519
Expenses:					
Unemployment Benefits	$377	$369	$402	$454	$492
Ending Reserve Fund Balance	**$1,731**	**$1,905**	**$2,013**	**$2,064**	**$2,091**

2019 UI Financial Outlook: UI Trust Fund Projections

Scenario 2: UI Benefit Payments Increase to Typical Levels

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
	2018	2019	2020	2021	2022
Opening Unemployment Reserve Fund Balance	$1,472	$1,731	$1,737	$1,688	$1,597
Revenues:					
State Unemployment Revenues (employer taxes)	$598	$498	$491	$526	$565
Interest Income	$37	$45	$43	$41	$39
Total Revenue	$635	$543	$534	$567	$604
Expenses:					
Unemployment Benefits	$377	$535	$582	$658	$712
Ending Reserve Fund Balance	**$1,731**	**$1,737**	**$1,688**	**$1,597**	**$1,488**

2019 UI Financial Outlook: UI Trust Fund Projections

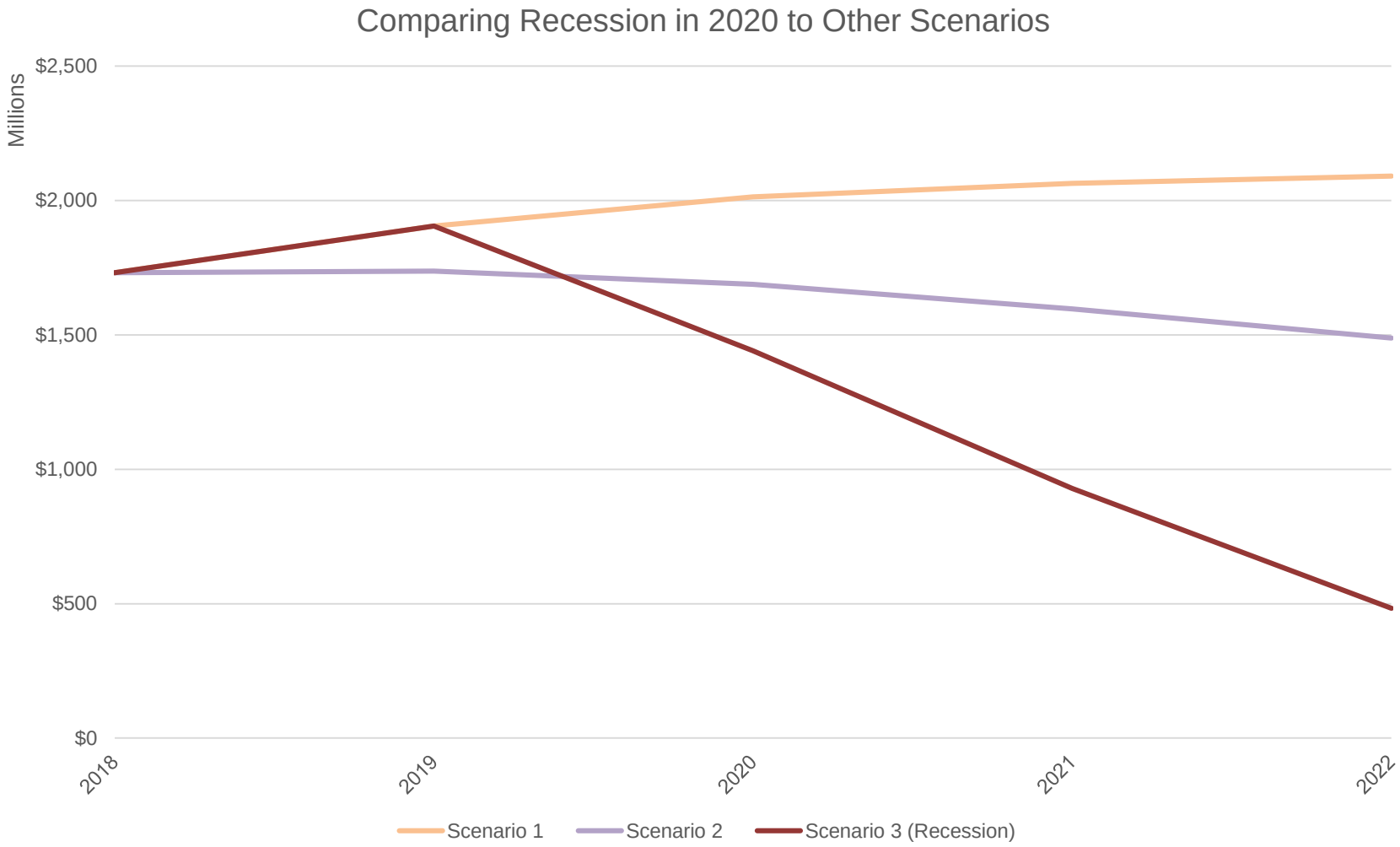


2019 UI Financial Outlook: UI Trust Fund Projections

Scenario 3: U.S. Enters a Recession in 2020

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
	2018	2019	2020	2021	2022
Opening Unemployment Reserve Fund Balance	$1,472	$1,731	$1,905	$1,441	$929
Revenues:					
State Unemployment Revenues (employer taxes)	$598	$498	$461	$586	$710
Interest Income	$37	$45	$42	$30	$18
Total Revenue	$635	$541	$503	$616	$728
Expenses:					
Unemployment Benefits	$377	$369	$967	$1,128	$1,174
Ending Reserve Fund Balance	**$1,731**	**$1,905**	**$1,441**	**$929**	**$483**

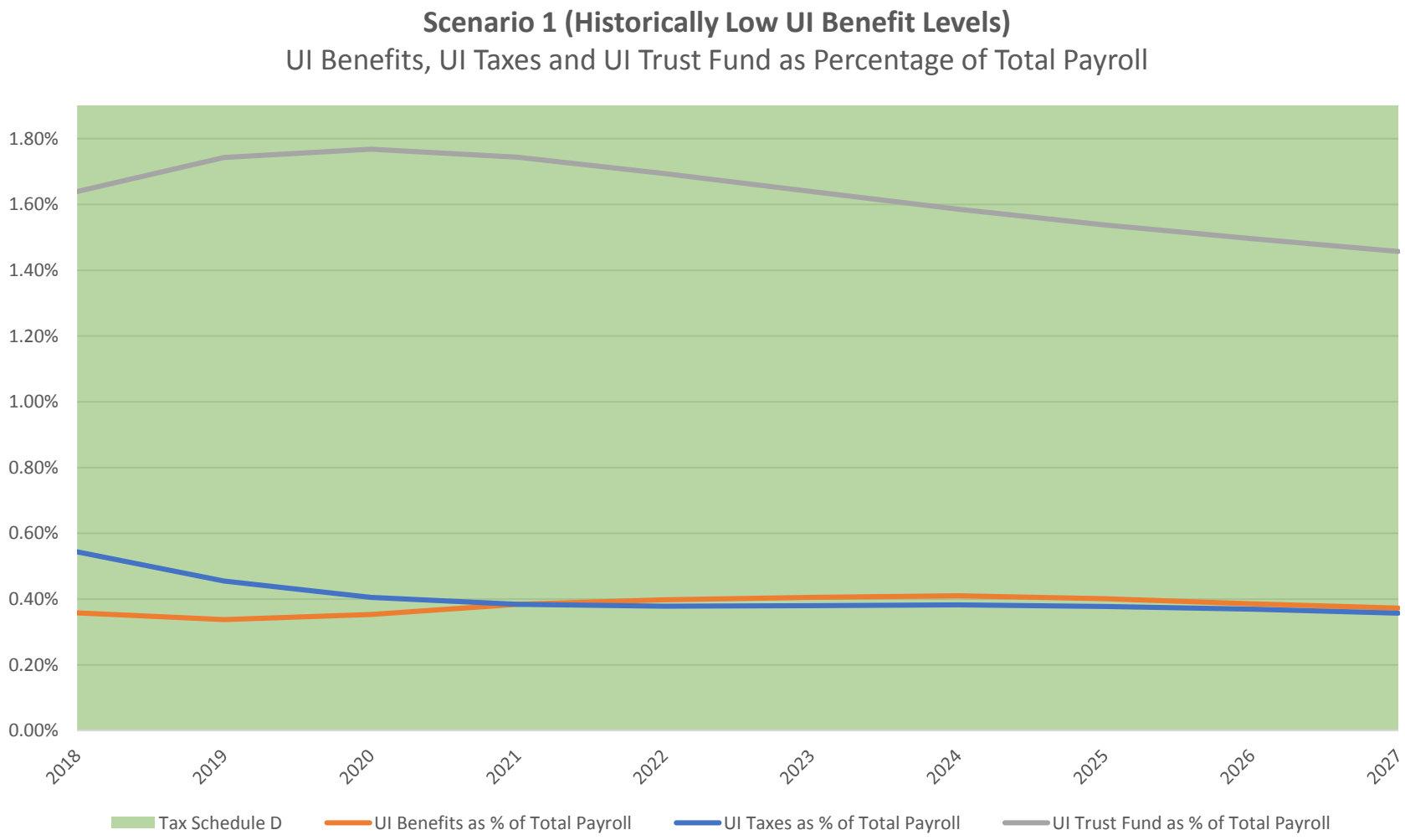
2019 UI Financial Outlook:
UI Trust Fund Projections



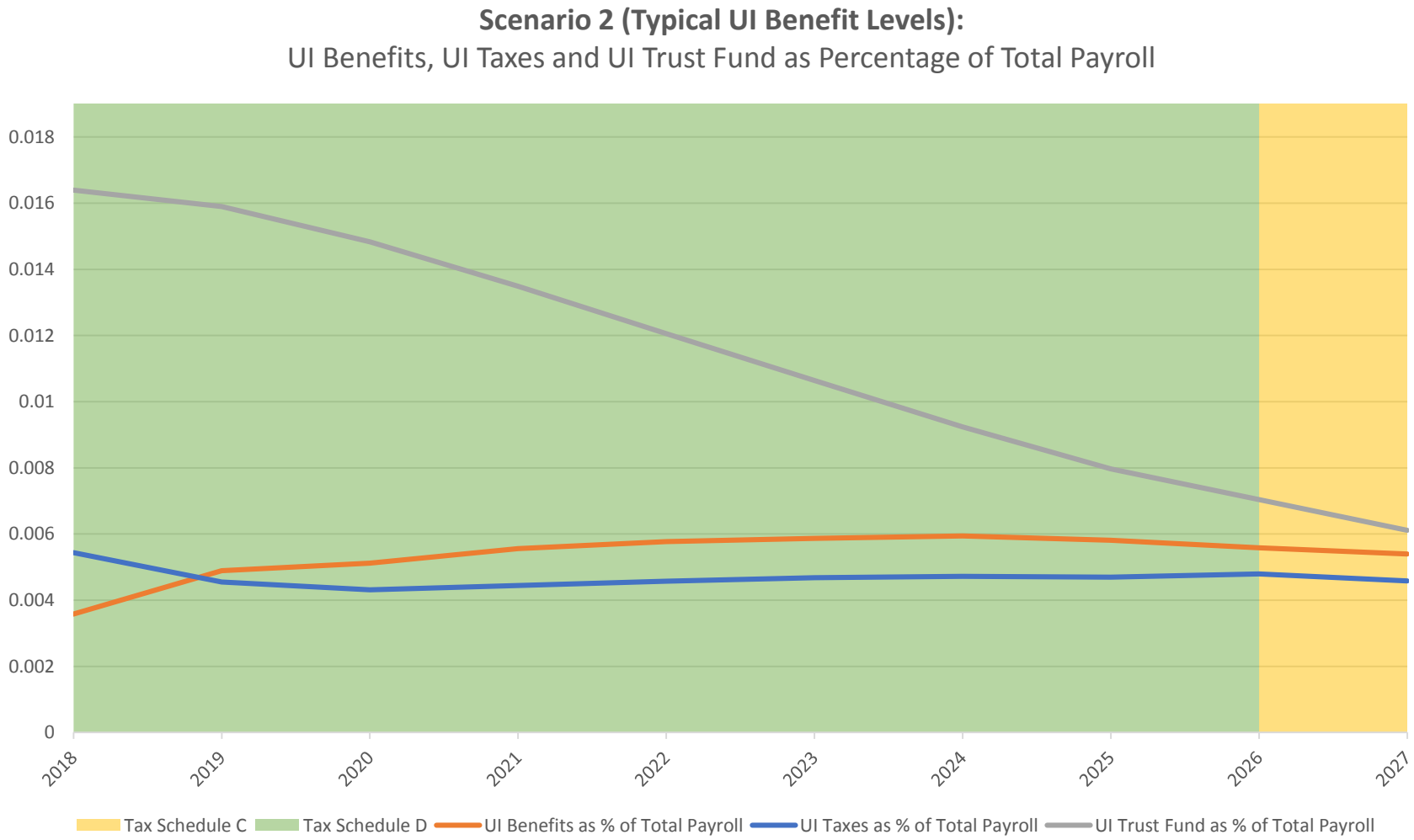
2019 UI Financial Outlook:
UI Trust Fund Long Run Simulations

- The UI Trust Fund projections provide a short term view
  - Provides basis for investigating short term impacts of policy and risk
- The UI Trust Fund long run simulations provide illustration of underlying issues in the UI financing system that shorter time horizons do not show

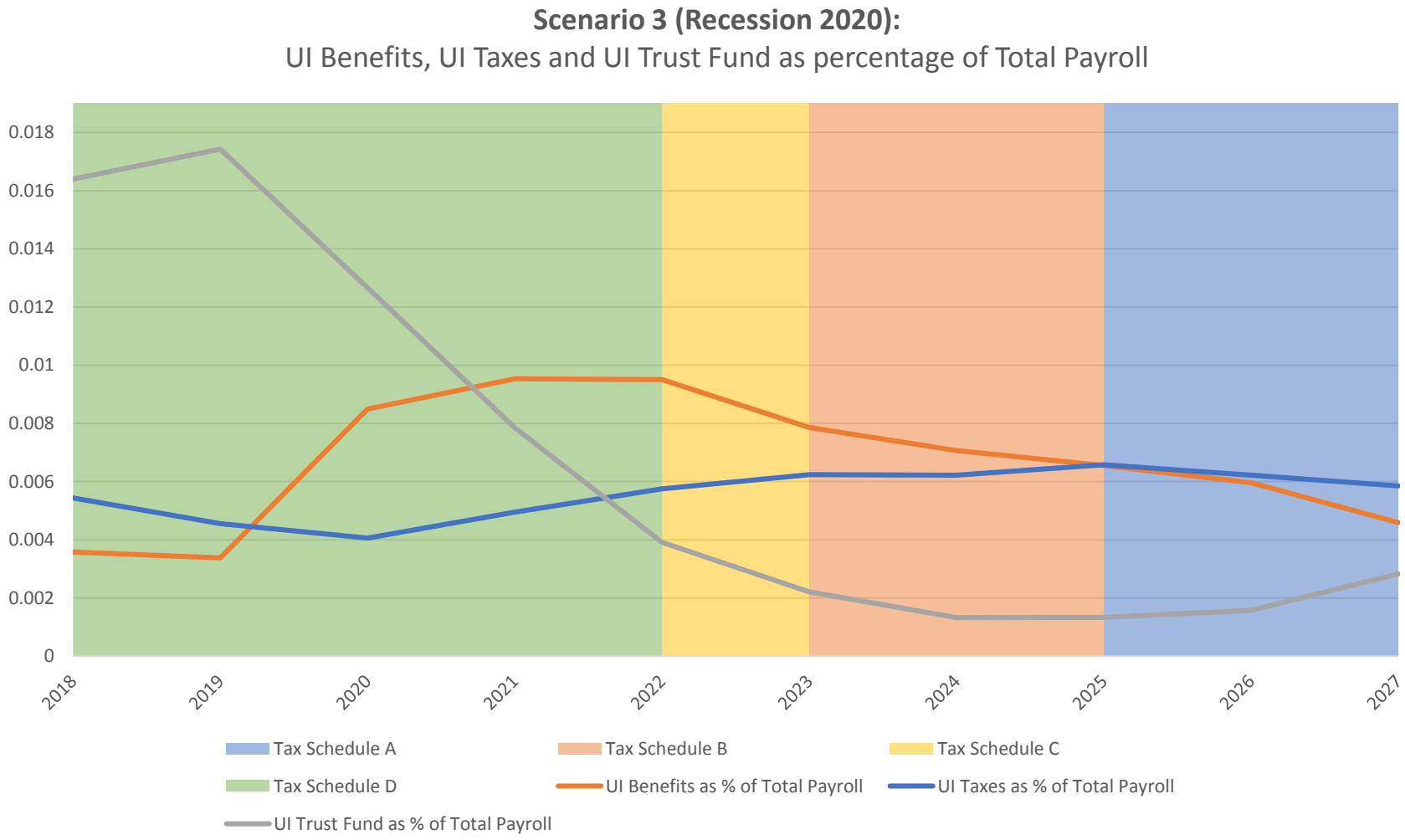
2019 UI Financial Outlook:
UI Trust Fund Long Run Simulations



2019 UI Financial Outlook:
UI Trust Fund Long Run Simulations



2019 UI Financial Outlook:
UI Trust Fund Long Run Simulations



2019 UI Financial Outlook Recommendation

DWD

Secretary's recommendation, page 33:

The Secretary recommends the Unemployment Insurance Advisory Council review all relevant factors and provide to the Governor and the Legislature proposed solutions to further strengthen the UI Trust Fund. Such solutions could entail adjusting the UI tax schedule triggers to account for a substantially larger Wisconsin economy, adjusting the UI taxable wage base to reflect growth in wages since the last increase, or deeper changes in the underlying reserve balance system and tax schedules.

The Department has significant information and research on the issues and alternative solutions and is prepared to support the Unemployment Insurance Advisory Council as it considers options to improve Wisconsin's Unemployment Insurance program.

Thank You

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116TH CONGRESS
1ST SESSION

H. R. 1121

To amend title III of the Social Security Act to permit States to conduct substance abuse risk assessments and targeted drug testing as a condition for the receipt of unemployment benefits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2019

Mr. CARTER of Georgia (for himself, Mr. CHABOT, Mr. ALLEN, Mr. COLE, Mr. LOUDERMILK, Mr. WESTERMAN, Mr. DUNCAN, Mr. ROUZER, Mr. MITCHELL, Mr. WRIGHT, Mr. DESJARLAIS, and Mr. WEBER of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend title III of the Social Security Act to permit States to conduct substance abuse risk assessments and targeted drug testing as a condition for the receipt of unemployment benefits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ensuring Quality in the Unemployment Insurance Program (EQUIP) Act''.

SEC. 2. DRUG SCREENING MADE A CONDITION OF BENEFIT RECEIPT.

(a) IN GENERAL.—Section 303(l) of the Social Security Act (42 U.S.C. 503(l)) is amended to read as follows:

"(l)(1) Nothing in this Act or any other provision of Federal law shall be considered to prevent a State from enacting legislation to provide for testing an applicant for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, including legislation that provides for the following procedures:

"(A) No regular compensation may be paid to an applicant for such compensation with respect to a benefit year unless, before the receipt of any such compensation—

"(i) the applicant has completed a substance abuse risk assessment for such benefit year; and

"(ii) subject to subparagraph (B), if the State determines based on the results of such assessment that the applicant is a high-risk applicant, not later than 1 week after the results of the assessment are determined, the applicant tests negative for controlled substances.

"(B) If a high-risk applicant tests positive for any controlled substance—

"(i) if such test result is the first positive test result for such applicant in the benefit year—

"(I) no regular compensation may be paid to such applicant for a period of 30 days beginning on the date that such test result is determined; and

"(II) no regular compensation may be paid to such applicant during the remainder of such benefit year unless the applicant tests negative for controlled substances at the end of such period;

"(ii) if such test result is not the first positive test result for such applicant in the benefit year, no regular compensation may be paid to such applicant during the remainder of such benefit year.

"(C) A high-risk applicant receiving benefits with respect to a benefit year shall be subject to testing for controlled substances by the State at any time during the benefit year, with limited notice provided to the applicant of such testing.

"(D) A high-risk applicant who is tested for controlled substances under—

"(i) subparagraph (A) or (C) shall be responsible for the cost of such test if the individual tests positive for any such substance; and

"(ii) subparagraph (B)(i)(II) shall be responsible for the cost of such test.

"(2) For purposes of this subsection—

"(A) the term 'benefit year' means the benefit year as defined in the applicable State law;

"(B) the term 'controlled substance'—

"(i) means a drug or other substance selected by the State to be included in drug testing under this subsection; and

"(ii) does not include any drug or other substance used by the applicant pursuant to a valid prescription or as otherwise authorized by law;

"(C) the term 'high-risk applicant', with respect to a benefit year, means an individual who is determined by the State to have a high risk of substance abuse based on the results of a substance abuse risk assessment administered under paragraph (1)(A)(i); and

"(D) the term 'substance abuse risk assessment' means a screening instrument, approved by the Director of the National Institutes of Health, de-

signed to determine whether an individual has a high risk of substance abuse.''.

(b) NO MERIT STAFFING REQUIREMENTS.—Section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) shall not be construed in such a manner as to apply the merit staffing requirements in section 900.603 of title 5, Code of Federal Regulations, as in effect on October 1, 2011, to the implementation of section 303(l) of such Act (as amended by subsection (a)).

(c) FUNDING FOR SUBSTANCE ABUSE TESTING.—

(1) FUNDING FROM IPAB.—Section 1899A(m) of the Social Security Act (42 U.S.C. 1395kkk(m)) is amended—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking ''to the Board to carry'' and inserting ''for the purposes of carrying out section 303(l), and, if any funds remain in the fiscal year involved, for the Board for the purpose of carrying''; and

(B) by striking paragraph (2).

(2) FUNDING FROM THE CO-OP PROGRAM.—Section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)) is amended by striking ''to carry out this section'' and inserting ''to carry out section 303(l) of the Social Security

1 Act, to the extent funds are necessary to carry out
2 such section after the application of section
3 1899A(m)(1) of such Act''.

○

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0154/1
ALL:wlj&kjf

2019 ASSEMBLY BILL 220

May 17, 2019 – Introduced by Representatives SARGENT, OHNSTAD, FIELDS, ANDERSON, BOWEN, BROSTOFF, CROWLEY, EMERSON, GRUSZYNSKI, HEBL, KOLSTE, POPE, SINICKI, SPREITZER, STUBBS, STUCK, C. TAYLOR and ZAMARRIPA, cosponsored by Senators JOHNSON, L. TAYLOR, LARSON, SMITH and MILLER. Referred to Committee on Criminal Justice and Public Safety.

AN ACT ***to repeal*** 23.33 (1) (jo) 5., 23.335 (1) (zgm) 5., 30.50 (10m) (e), 340.01 (50m) (e), 350.01 (10v) (e), 885.235 (1) (d) 5., 939.22 (33) (e), 961.11 (4g), 961.14 (4) (t), 961.32 (2m), 961.38 (1n), 961.41 (1) (h), 961.41 (1m) (h), 961.41 (1q), 961.41 (3g) (e), 961.571 (1) (a) 7., 961.571 (1) (a) 11. e., 961.571 (1) (a) 11. k. and L. and 967.055 (1m) (b) 5.; ***to renumber*** 30.681 (1) (bn) and subchapter VI (title) of chapter 50 [precedes 50.90]; ***to renumber and amend*** 23.33 (4c) (a) 5., 23.335 (12) (a) 5., 23.335 (12) (b) 5., 30.681 (1) (d), 108.133 (1) (a), 115.35 (1), 346.63 (1) (d), 350.101 (1) (e), 961.01 (14) and 961.34; ***to amend*** 20.435 (6) (jm), 23.33 (1) (jo) 1., 23.33 (4c) (a) 4., 23.33 (4c) (b) 3., 23.33 (4c) (b) 4. a., 23.33 (4c) (b) 4. b., 23.33 (4p) (d), 23.33 (13) (b) 1., 23.33 (13) (b) 2., 23.33 (13) (b) 3., 23.33 (13) (b) 4., 23.33 (13) (e), 23.335 (1) (zgm) 1., 23.335 (12) (a) 4., 23.335 (12) (b) 3., 23.335 (12) (b) 4., 23.335 (12) (i), 23.335 (23) (c) 1., 23.335 (23) (c) 2., 23.335 (23) (c) 3., 23.335 (23) (c) 4., 30.50 (10m) (a), 30.681 (1) (b) (title), 30.681 (1) (bn) (title), 30.681 (1) (c), 30.681 (2) (b) (title), 30.681 (2) (c), 30.681 (2) (d) 1. a., 30.681

(2) (d) 1. b., 30.684 (4), 30.80 (6) (d), 49.148 (4) (a), 49.45 (23) (g) 5., 49.79 (1) (b), 50.56 (3), 51.49 (1) (d), 59.54 (25) (title), 59.54 (25) (a) (intro.), 66.0107 (1) (bm), 77.52 (13), 77.53 (10), 111.35 (2) (e), 114.09 (2) (bm) 1. (intro.), 114.09 (2) (bm) 4., 146.40 (1) (bo), 146.81 (1) (L), 146.997 (1) (d) 18., 157.06 (11) (i), 289.33 (3) (d), 340.01 (50m) (a), 343.06 (1) (d), 343.10 (5) (a) 1., 343.10 (5) (a) 2., 343.10 (8) (intro.), 343.12 (7) (a) 9., 343.12 (7) (a) 11., 343.16 (2) (b), 343.16 (5) (a), 343.30 (1p), 343.30 (1q) (c) 1. (intro.), 343.30 (1q) (d) 1., 343.30 (1q) (h), 343.305 (2), 343.305 (3) (a), 343.305 (3) (am), 343.305 (3) (ar) 1., 343.305 (3) (b), 343.305 (5) (b), 343.305 (5) (d), 343.305 (6) (a), 343.305 (7) (a), 343.305 (8) (b) 2. bm., 343.305 (8) (b) 2. d., 343.305 (8) (b) 4m. a., 343.305 (8) (b) 5. b., 343.305 (8) (b) 6. b., 343.305 (9) (a) 5. a., 343.305 (9) (a) 5. c., 343.305 (9) (am) 5. a., 343.305 (9) (am) 5. c., 343.305 (9) (d), 343.305 (10) (c) 1. (intro.), 343.305 (10) (d), 343.305 (10) (em), 343.307 (1) (d), 343.307 (2) (e), 343.31 (1) (am), 343.31 (2), 343.315 (2) (a) 2., 343.315 (2) (a) 5., 343.315 (2) (a) 6., 343.315 (2) (bm) 2., 343.32 (2) (bj), 343.38 (1) (d) 2., 343.44 (1) (a), 343.44 (1) (b), 344.576 (2) (b), 346.63 (1) (b), 346.63 (2) (a) 2., 346.63 (2) (b) 1., 346.63 (2) (b) 2., 346.637, 346.65 (2m) (a), 346.65 (2q), 346.93 (1), 346.935 (1), 346.935 (2), 346.935 (3), 349.02 (2) (b) 4., 349.03 (2m), 349.06 (1m), 350.01 (10v) (a), 350.101 (1) (d), 350.101 (2) (c), 350.101 (2) (d) 1., 350.101 (2) (d) 2., 350.104 (4), 350.11 (3) (a) 1., 350.11 (3) (a) 2., 350.11 (3) (a) 3., 350.11 (3) (a) 4., 350.11 (3) (d), 609.83, 767.41 (5) (am) (intro.), 767.451 (5m) (a), 885.235 (1) (d) 1., 885.235 (1g) (intro.), 885.235 (1m), 885.235 (4), 895.047 (3) (a), 905.04 (4) (f), 939.22 (33) (a), 940.09 (1m) (a), 940.09 (1m) (b), 940.09 (2) (a), 940.09 (2) (b), 940.25 (1m), 940.25 (2) (a), 940.25 (2) (b), 941.20 (1) (bm), 961.41 (1r), 961.41 (3g) (c), 961.41 (3g) (d), 961.41 (3g) (em), 961.47 (1), 961.48 (3), 961.48 (5), 961.49 (1m) (intro.), 961.571 (1) (a) 11. (intro.), 967.055 (1) (a),

967.055 (1) (b), 967.055 (1m) (b) 1., 967.055 (2) (a), 971.365 (1) (a), 971.365 (1) (b), 971.365 (1) (c) and 971.365 (2); and ***to create*** 20.115 (7) (ge), 20.435 (1) (gq), 20.435 (1) (jm), 20.566 (1) (bn), 23.33 (1) (k), 23.33 (4c) (a) 2g., 23.33 (4c) (a) 3g., 23.33 (4c) (a) 5. b., 23.33 (4c) (b) 2n., 23.33 (4c) (b) 4. c., 23.335 (1) (zLg), 23.335 (12) (a) 2g., 23.335 (12) (a) 3m., 23.335 (12) (a) 5. b., 23.335 (12) (b) 2g., 23.335 (12) (b) 5. b., 30.50 (13p), 30.50 (13t), 30.681 (1) (b) 1g., 30.681 (1) (bn) 2., 30.681 (1) (d) 2., 30.681 (2) (b) 1g., 30.681 (2) (d) 1. c., subchapter VI of chapter 50 [precedes 50.80], 66.0414, 77.54 (69), 94.56, 100.145, 108.02 (18r), 108.04 (5m), 108.133 (1) (a) 2., 111.32 (9m), 111.32 (11m), 115.35 (1) (a) 6., 121.02 (1) (L) 8., subchapter IV of chapter 139 [precedes 139.97], 146.44, 146.46, 157.06 (11) (hm), 340.01 (66m), 343.305 (5) (dm), 346.63 (1) (d) 2., 346.63 (2) (b) 3., 346.63 (2p), 350.01 (21g), 350.101 (1) (bg), 350.101 (1) (cg), 350.101 (1) (e) 2., 350.101 (2) (bg), 350.101 (2) (d) 3., 632.895 (16p), 767.41 (5) (d), 767.451 (5m) (d), 885.235 (1) (e), 885.235 (1g) (ag), 885.235 (1g) (cg), 885.235 (1L), 939.22 (39g), 940.09 (1) (bg), 940.09 (1) (dg), 940.09 (1g) (bg), 940.09 (1g) (dg), 940.09 (2) (c), 940.25 (1) (bg), 940.25 (1) (dg), 940.25 (2) (c), 941.20 (1) (bg), subchapter VIII of chapter 961 [precedes 961.70] and 973.016 of the statutes; **relating to:** marijuana possession, regulation of marijuana distribution and cultivation, medical marijuana, operating a motor vehicle while under the influence of marijuana, requiring the exercise of rule–making authority, granting rule–making authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing, distributing, or delivering marijuana; possessing marijuana with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess marijuana; using drug paraphernalia; or possessing drug paraphernalia with the intent to produce, distribute, or use a

controlled substance. This bill changes state law so that state law permits both recreational use of marijuana and medical use of marijuana.

RECREATIONAL USE OF MARIJUANA

With respect to recreational use of marijuana, the bill changes state law to permit a Wisconsin resident who is at least 21 years of age to possess no more than two ounces of marijuana and to permit a nonresident of Wisconsin who is at least 21 years of age to possess no more than one–quarter ounce of marijuana. Generally, under the bill, a person who possesses more than the maximum amount he or she is allowed to possess, but not more than 28 grams of marijuana, is subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both. A person who possesses more than 28 grams of marijuana is guilty of a Class B misdemeanor, except that, if the person takes action to hide the amount of marijuana he or she has and the person has in place a security system to alert him or her to the presence of law enforcement, a method of intimidation, or a trap that could injure or kill a person approaching the area containing the marijuana, the person is guilty of a Class I felony. The bill also eliminates the prohibition on possessing or using drug paraphernalia that relates to marijuana consumption.

The bill creates a process by which a person may obtain a permit to produce, process, or sell marijuana for recreational use and pay an excise tax for the privilege of doing business in this state. The bill requires a person to obtain separate permits from the Department of Revenue to produce, process, distribute, or sell marijuana, and requires marijuana producers and processors to obtain additional permits from the Department of Agriculture, Trade and Consumer Protection. The requirements for obtaining these permits differ based on whether the permit is issued by DOR or DATCP but, in general, a person may not obtain such a permit if he or she is not a state resident, is under the age of 21, or has been convicted of certain crimes; in addition, a person may not operate under a DOR permit within 500 feet of a school, playground, recreation facility, child care facility, public park, public transit facility, or library and may not operate as a marijuana producer under a DATCP permit within 500 feet of a school. A person who holds a permit from DOR must also comply with certain operational requirements.

Under the bill, a permit applicant with 20 or more employees may not receive a permit from DATCP or DOR unless the the applicant certifies that the applicant has entered into a labor peace agreement with a labor organization. The labor peace agreement prohibits the labor organization and its members from engaging in any economic interference with persons doing business in this state, prohibits the applicant from disrupting the efforts of the labor organization to communicate with and to organize and represent the applicant's employees, and provides the labor organization access to areas in which the employees work to discuss employment rights and the terms and conditions of employment. Current law prohibits the state and any local unit of government from requiring a labor peace agreement as a condition for any regulatory approval. The permit requirements under the bill are not subject to that prohibition.

The bill also requires DATCP and DOR to use a competitive scoring system to determine which applicants are eligible to receive permits. Each department must

issue permits to the highest scoring applicants that it determines will best protect the environment; provide stable, family–supporting jobs to local residents; ensure worker and consumer safety; operate secure facilities; and uphold the laws of the jurisdictions in which they operate. Each department may deny a permit to an applicant with a low score.

Under the bill, a person who does not have a permit from DOR to sell marijuana may not sell, distribute, or transfer marijuana, or possess marijuana with the intent to sell or distribute it. A person who violates the prohibition is guilty of a Class I felony except that the felony classification increases to a Class H felony if the person sells, distributes, or transfers the marijuana to a person who is under the age of 21 (minor) and the person is at least three years older than the minor. The bill prohibits a DOR permittee from selling, distributing, or transferring marijuana to a minor and from allowing a minor to be on premises for which a permit is issued. If a permittee violates one of those prohibitions, the permittee may be subject to a civil forfeiture of not more than $500 and the permit may be suspended for up to 30 days. Under the bill, a minor who does any of the following is subject to a forfeiture of not less than $250 nor more than $500: procures or attempts to procure marijuana from a permittee; falsely represents his or her age to receive marijuana from a permittee; knowingly possesses marijuana for recreational use; or knowingly enters any premises for which a permit has been issued without being accompanied by his or her parent, guardian, or spouse who is at least 21 years of age.

In addition, under the bill, a person who is cultivating marijuana plants without a permit who possesses more than six marijuana plants that have reached the flowering stage but not more than 12 at one time is subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both. If the person possesses more than 12 plants that have reached the flowering stage at one time, the person is guilty of a Class B misdemeanor, except that, if the person takes action to hide the number of plants he or she has and the person has in place a security system to alert him or her to the presence of law enforcement, a method of intimidation, or a trap that could injure or kill a person approaching the area containing the plants, the person is guilty of a Class I felony.

MEDICAL USE OF MARIJUANA

With respect to the medical use of marijuana, the bill changes state law to permit a person to use marijuana for medical use to alleviate the symptoms or effects of a debilitating medical condition or treatment. A person's primary caregiver also may acquire, possess, cultivate, or transport marijuana for a person suffering from a debilitating medical condition or treatment if it is not practicable for the person to acquire, possess, cultivate, or transport marijuana independently or the person is under the age of 18.

The bill requires the Department of Health Services to establish a registry for persons who use marijuana for medical use. Under the bill, a person may apply for a registry identification card by submitting to DHS a signed application, a written certification by the person's physician that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits of the person's use of tetrahydrocannabinols would likely outweigh the health risks for the

person, and a registration fee of not more than $150. DHS must verify the information and issue the person a registry identification card. A registry identification card is generally valid for four years and may be renewed. DHS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. The bill also requires DHS to promulgate a rule listing other jurisdictions that allow the medical use of marijuana by a visiting person or allow a person to assist with a person's medical use of marijuana. The bill treats documents issued by these entities the same as registry identification cards issued by DHS.

The bill also requires DHS to license and regulate compassion centers to distribute or deliver marijuana or drug paraphernalia or possess or manufacture marijuana or drug paraphernalia with the intent to deliver or distribute to facilitate the medical use of marijuana. The bill prohibits compassion centers from being located within 500 feet of a school, prohibits a compassion center from distributing to a person more than six live marijuana plants and three ounces of usable marijuana (maximum medicinal amount), and prohibits a compassion center from possessing a quantity that exceeds, by an amount determined by DHS, the total maximum medicinal amount of marijuana of all of the persons it serves. An applicant for a license must pay an initial application fee of $250, and a compassion center must pay an annual fee of $5,000. The bill also requires DHS to register entities as tetrahydrocannabinols–testing laboratories. The laboratories must test marijuana for contaminants; research findings on the use of medical marijuana; and provide training on safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana, security and inventory accountability, and research on medical marijuana.

The bill requires health insurance policies, known in the bill as disability insurance policies, and self–insured health plans of the state or of a county, city, town, village, or school district that provides coverage of prescription drugs and devices to provide coverage for the medical use of THC in accordance with requirements specified in the bill and any equipment or supplies necessary for the medical use of THC. The coverage of the medical use of THC may be subject under the policy or plan only to the exclusions, limitations, and cost–sharing provisions that apply generally to the coverage of prescription drugs or devices under the policy or plan.

GENERAL REGULATION OF MARIJUANA

Under current law, a person may not operate a vehicle with a detectable amount of a restricted controlled substance, which includes delta–9–tetrahydrocannabinol (THC), in his or her blood, regardless of impairment. Penalties for violating this provision increase with the number of violations. Under the bill, a person may not operate a vehicle with a THC concentration of 5.0 ng/mL or more, instead of a detectable amount, in his or her blood. The bill does not change the penalty structure.

Under the fair employment law, no employer or other person may engage in any act of employment discrimination against any individual on the basis of the individual's use or nonuse of lawful products off the employer's premises during

nonworking hours, subject to certain exceptions, one of which is if the use impairs the individual's ability to undertake adequately the job–related responsibilities of that individual's employment. The bill specifically defines marijuana as a lawful product for purposes of the fair employment law, such that no person may engage in any act of employment discrimination against an individual because of the individual's use of marijuana off the employer's premises during nonworking hours, subject to those exceptions.

Under current law, an individual may be disqualified from receiving unemployment insurance benefits if he or she is terminated because of misconduct or substantial fault. The bill specifically provides that an employee's use of marijuana off the employer's premises during nonworking hours does not constitute misconduct or substantial fault unless termination for that use is permitted under one of the exceptions under the fair employment law. Also under current law, the Department of Workforce Development must establish a program to test claimants who apply for UI benefits for the presence of controlled substances, as defined under federal law. If a claimant tests positive for a controlled substance, the claimant may be denied UI benefits, subject to certain exceptions and limitations. The bill excludes THC for purposes of this testing requirement. As such, under the bill, an individual who tests positive for THC may not be denied UI benefits.

The bill exempts THC, including marijuana, from drug testing for certain public assistance programs. Currently, a participant in a community service job or transitional placement under the Wisconsin Works program (W2) or a recipient of the FoodShare program, also known as the food stamp program, who is convicted of possession, use, or distribution of a controlled substance must submit to a test for controlled substances as a condition of continued eligibility. DHS is currently required to request a waiver of federal Medicaid law to require drug screening and testing as a condition of eligibility for the childless adult demonstration project in the Medical Assistance program. Current law also requires DHS to promulgate rules to develop and implement a drug screening, testing, and treatment policy for able–bodied adults without dependents in the FoodShare employment and training program. The bill exempts THC from all of those drug–testing requirements and programs. In addition, because THC is not a controlled substance under state law under the bill, the requirement under current law that the Department of Children and Families promulgate rules to create a controlled substance abuse screening and testing requirement for applicants for the work experience program for noncustodial parents under W2 and the Transform Milwaukee Jobs and Transitional Jobs programs does not include THC.

Unless federal law requires otherwise, the bill prohibits a hospital, physician, organ procurement organization, or other person from determining the ultimate recipient of an anatomical gift on the sole basis of a positive test for the use of marijuana by a potential recipient.

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

This proposal may contain a health insurance mandate requiring a social and financial impact report under s. 601.423, stats.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

			2019-20	**2020-21**
20.566 Revenue, department of				
(1) COLLECTION OF TAXES				
(bn) Administration and enforcement of marijuana tax and regulation	GPR	A	–0–	1,100,800

SECTION 2. 20.115 (7) (ge) of the statutes is created to read:

20.115 **(7)** (ge) *Marijuana producers and processors; official logotype.* All moneys received under s. 94.56 for regulation of activities relating to marijuana under s. 94.56, for conducting public awareness campaigns under s. 94.56, and for the creation of a logotype under s. 100.145.

SECTION 3. 20.435 (1) (gq) of the statutes is created to read:

20.435 **(1)** (gq) *Medical marijuana registry program; physician education and public awareness campaign; official logotype.* All moneys received under s. 146.44 for costs relating to the administration of the medical marijuana registry program under s. 146.44, for educating physicians about the availability of medical marijuana

and conducting public awareness campaigns under s. 146.44, and for the creation of a logotype under s. 146.46.

SECTION 4. 20.435 (1) (jm) of the statutes is created to read:

20.435 **(1)** (jm) *Licensing and support services for compassion centers.* All moneys received under s. 50.84 to regulate and license compassion centers under subch. VI of ch. 50.

SECTION 5. 20.435 (6) (jm) of the statutes is amended to read:

20.435 **(6)** (jm) *Licensing and support services.* The amounts in the schedule for the purposes specified in ss. 48.685 (2) (am) and (b), (3) (a) and (b), and (5) (a), 48.686 (2) (am), (3) (am) and (bm), and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and subch. ~~VI~~ VII of ch. 50 and to conduct health facilities plan and rule development activities, for accrediting nursing homes, convalescent homes, and homes for the aged, to conduct capital construction and remodeling plan reviews under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection. All moneys received under ss. 48.685 (8), 48.686 (2) (ag), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection, and all moneys received under s. 50.135 (2) shall be credited to this appropriation account.

SECTION 6. 20.566 (1) (bn) of the statutes is created to read:

20.566 **(1)** (bn) *Administration and enforcement of marijuana tax and regulation.* The amounts in the schedule for the purposes of administering the marijuana tax imposed under subch. IV of ch. 139 and for the costs incurred in enforcing the taxing and regulation of marijuana producers, marijuana processors, and marijuana retailers under subch. IV of ch. 139.

SECTION 7. 23.33 (1) (jo) 1. of the statutes is amended to read:

23.33 **(1)** (jo) 1. A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 8. 23.33 (1) (jo) 5. of the statutes is repealed.

SECTION 9. 23.33 (1) (k) of the statutes is created to read:

23.33 **(1)** (k) "Tetrahydrocannabinols concentration" means the number of nanograms of tetrahydrocannabinols per milliliter of blood.

SECTION 10. 23.33 (4c) (a) 2g. of the statutes is created to read:

23.33 **(4c)** (a) 2g. 'Operating with a tetrahydrocannabinols concentration at or above specified levels.' No person may engage in the operation of an all–terrain vehicle or utility terrain vehicle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 11. 23.33 (4c) (a) 3g. of the statutes is created to read:

23.33 **(4c)** (a) 3g. 'Operating with a tetrahydrocannabinols concentration at specified levels; below age 21.' If a person has not attained the age of 21, the person may not engage in the operation of an all–terrain vehicle or utility terrain vehicle while he or she has a tetrahydrocannabinols concentration of more than 0.0 but less than 5.0.

SECTION 12. 23.33 (4c) (a) 4. of the statutes is amended to read:

23.33 **(4c)** (a) 4. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., 2g., or 2m., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions 1., 2., 2g., and 2m. each require proof of a fact for conviction which the others do not require.

SECTION 13. 23.33 (4c) (a) 5. of the statutes is renumbered 23.33 (4c) (a) 5. a. and amended to read:

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

SECTION 14. 23.33 (4c) (a) 5. b. of the statutes is created to read:

23.33 **(4c)** (a) 5. b. In an action under subd. 2g. or 3g. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 15. 23.33 (4c) (b) 2n. of the statutes is created to read:

23.33 **(4c)** (b) 2n. 'Causing injury while operating with tetrahydrocannabinols concentration at or above specified levels.' No person who has a tetrahydrocannabinols concentration of 5.0 or more may cause injury to another person by the operation of an all–terrain vehicle or utility terrain vehicle.

SECTION 16. 23.33 (4c) (b) 3. of the statutes is amended to read:

23.33 **(4c)** (b) 3. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., ~~or~~ 2m., or 2n. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., ~~or~~ 2m., or 2n. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of subd. 1., 2., ~~or~~ 2m., or 2n. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions 1., 2., ~~and~~ 2m., and 2n. each require proof of a fact for conviction which the others do not require.

SECTION 17. 23.33 (4c) (b) 4. a. of the statutes is amended to read:

23.33 **(4c)** (b) 4. a. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have an alcohol concentration of 0.08 or more, ~~or~~ did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 18. 23.33 (4c) (b) 4. b. of the statutes is amended to read:

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

SECTION 19. 23.33 (4c) (b) 4. c. of the statutes is created to read:

23.33 **(4c)** (b) 4. c. In an action under subd. 2n. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 20. 23.33 (4p) (d) of the statutes is amended to read:

23.33 **(4p)** (d) *Admissibility; effect of test results; other evidence.* The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all–terrain vehicle or utility terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations or tetrahydrocannabinols concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

SECTION 21. 23.33 (13) (b) 1. of the statutes is amended to read:

23.33 **(13)** (b) 1. Except as provided under subds. 2. and 3., a person who violates sub. (4c) (a) 1., 2., 2g., or 2m. or (4p) (e) shall forfeit not less than $150 nor more than $300.

SECTION 22. 23.33 (13) (b) 2. of the statutes is amended to read:

23.33 **(13)** (b) 2. Except as provided under subd. 3., a person who violates sub. (4c) (a) 1., 2., 2g., or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all–terrain vehicle or utility terrain vehicle law or the refusal law shall be fined not less than $300 nor more than $1,100 and shall be imprisoned not less than 5 days nor more than 6 months.

SECTION 23. 23.33 (13) (b) 3. of the statutes is amended to read:

23.33 **(13)** (b) 3. A person who violates sub. (4c) (a) 1., 2., 2g., or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all–terrain vehicle or utility terrain vehicle law or refusal law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

SECTION 24. 23.33 (13) (b) 4. of the statutes is amended to read:

23.33 **(13)** (b) 4. A person who violates sub. (4c) (a) 3. or 3g. or (4p) (e) and who has not attained the age of 21 shall forfeit not more than $50.

SECTION 25. 23.33 (13) (e) of the statutes is amended to read:

23.33 **(13)** (e) *Alcohol, controlled substances or controlled substance analogs, tetrahydrocannabinols; assessment.* In addition to any other penalty or order, a person who violates sub. (4c) (a) or (b) or (4p) (e) or who violates s. 940.09 or 940.25

if the violation involves the operation of an all–terrain vehicle or utility terrain vehicle, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

SECTION 26. 23.335 (1) (zgm) 1. of the statutes is amended to read:

23.335 **(1)** (zgm) 1. A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 27. 23.335 (1) (zgm) 5. of the statutes is repealed.

SECTION 28. 23.335 (1) (zLg) of the statutes is created to read:

23.335 **(1)** (zLg) "Tetrahydrocannabinols concentration" has the meaning given in s. 340.01 (66m).

SECTION 29. 23.335 (12) (a) 2g. of the statutes is created to read:

23.335 **(12)** (a) 2g. No person may engage in the operation of an off–highway motorcycle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 30. 23.335 (12) (a) 3m. of the statutes is created to read:

23.335 **(12)** (a) 3m. If a person has not attained the age of 21, the person may not engage in the operation of an off–highway motorcycle while he or she has a tetrahydrocannabinols concentration of more than 0.0 but less than 5.0.

SECTION 31. 23.335 (12) (a) 4. of the statutes is amended to read:

23.335 **(12)** (a) 4. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., 2g., or 2m.

for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., 2g., or 2m., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (23) (c) 2. and 3. Subdivisions 1., 2., 2g., and 2m. each require proof of a fact for conviction which the others do not require.

SECTION 32. 23.335 (12) (a) 5. of the statutes is renumbered 23.335 (12) (a) 5. a. and amended to read:

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

SECTION 33. 23.335 (12) (a) 5. b. of the statutes is created to read:

23.335 **(12)** (a) 5. b. In an action under subd. 2g. or 3m. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 34. 23.335 (12) (b) 2g. of the statutes is created to read:

23.335 **(12)** (b) 2g. No person who has a tetrahydrocannabinols concentration of 5.0 or more may cause injury to another person by the operation of an off–highway motorcycle.

SECTION 35. 23.335 (12) (b) 3. of the statutes is amended to read:

23.335 **(12)** (b) 3. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., 2g., or 2m. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (23) (c) 2. and 3. Subdivisions 1., 2., 2g., and 2m. each require proof of a fact for conviction which the others do not require.

SECTION 36. 23.335 (12) (b) 4. of the statutes is amended to read:

23.335 **(12)** (b) 4. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and even if he or she had not been under the influence of an intoxicant to a degree which rendered him or her incapable of safe operation, did not have an alcohol concentration of 0.08 or more, ~~or~~ did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 37. 23.335 (12) (b) 5. of the statutes is renumbered 23.335 (12) (b) 5. a. and amended to read:

23.335 **(12)** (b) 5. a. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ or

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

SECTION 38. 23.335 (12) (b) 5. b. of the statutes is created to read:

23.335 **(12)** (b) 5. b. In an action under subd. 2g. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 39. 23.335 (12) (i) of the statutes is amended to read:

23.335 **(12)** (i) *Chemical tests; effect of test results.* The results of a chemical test required or administered under par. (f) or (g) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an off-highway motorcycle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations or tetrahydrocannabinols concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. Paragraphs (f) to (h) do not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

SECTION 40. 23.335 (23) (c) 1. of the statutes is amended to read:

23.335 **(23)** (c) 1. Except as provided under subds. 2., 3., and 4., a person who violates sub. (12) (a) 1., 2., 2g., or 2m. or (h) shall forfeit not less than $150 nor more than $300.

SECTION 41. 23.335 (23) (c) 2. of the statutes is amended to read:

23.335 **(23)** (c) 2. Except as provided under subds. 3. and 4., a person who violates sub. (12) (a) 1., 2., 2g., or 2m. or (h) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an off–highway motorcycle law shall be fined not less than $300 nor more than $1,100 and shall be imprisoned not less than 5 days nor more than 6 months.

SECTION 42. 23.335 (23) (c) 3. of the statutes is amended to read:

23.335 **(23)** (c) 3. Except as provided in subd. 4., a person who violates sub. (12) (a) 1., 2., 2g., or 2m. or (h) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an off–highway motorcycle law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

SECTION 43. 23.335 (23) (c) 4. of the statutes is amended to read:

23.335 **(23)** (c) 4. A person who violates sub. (12) (a) 3. or 3m. or (h) and who has not attained the age of 21 shall forfeit not more than $50.

SECTION 44. 30.50 (10m) (a) of the statutes is amended to read:

30.50 **(10m)** (a) A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 45. 30.50 (10m) (e) of the statutes is repealed.

SECTION 46. 30.50 (13p) of the statutes is created to read:

30.50 **(13p)** "Tetrahydrocannabinols concentration" means the number of nanograms of tetrahydrocannabinols per milliliter of blood.

SECTION 47. 30.50 (13t) of the statutes is created to read:

30.50 **(13t)** "Tetrahydrocannabinols concentration" has the meaning given in s. 340.01 (66m).

SECTION 48. 30.681 (1) (b) (title) of the statutes is amended to read:

30.681 **(1)** (b) (title) *Operating after using a controlled substance ~~or~~, alcohol, or tetrahydrocannabinols.*

SECTION 49. 30.681 (1) (b) 1g. of the statutes is created to read:

30.681 **(1)** (b) 1g. No person may engage in the operation of a motorboat while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 50. 30.681 (1) (bn) (title) of the statutes is amended to read:

30.681 **(1)** (bn) (title) *Operating with alcohol or tetrahydrocannabinols concentrations at specified levels; below legal ~~drinking~~ age.*

SECTION 51. 30.681 (1) (bn) of the statutes is renumbered 30.681 (1) (bn) 1.

SECTION 52. 30.681 (1) (bn) 2. of the statutes is created to read:

30.681 **(1)** (bn) 2. A person who has not attained the legal age, as defined in s. 961.70 (2), may not engage in the operation of a motorboat while he or she has a tetrahydrocannabinols concentration of more than 0.0 but less than 5.0.

SECTION 53. 30.681 (1) (c) of the statutes is amended to read:

30.681 **(1)** (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) or (b) 1., 1g., 1m., or 2., the offenses shall be joined. If the person is found guilty of any combination of par.

(a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1g., 1m., and 2. each require proof of a fact for conviction which the others do not require.

SECTION 54. 30.681 (1) (d) of the statutes is renumbered 30.681 (1) (d) 1. and amended to read:

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

SECTION 55. 30.681 (1) (d) 2. of the statutes is created to read:

30.681 **(1)** (d) 2. In an action under par. (b) 1g. or (bn) 2. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 56. 30.681 (2) (b) (title) of the statutes is amended to read:

30.681 **(2)** (b) (title) *Causing injury after using a controlled substance ~~or~~, alcohol, or tetrahydrocannabinols*.

SECTION 57. 30.681 (2) (b) 1g. of the statutes is created to read:

30.681 **(2)** (b) 1g. No person who has a tetrahydrocannabinols concentration of 5.0 or more may cause injury to another person by the operation of a motorboat.

SECTION 58. 30.681 (2) (c) of the statutes is amended to read:

30.681 **(2)** (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) or (b) 1., 1g., 1m., or 2. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1g., 1m., and 2. each require proof of a fact for conviction which the others do not require.

SECTION 59. 30.681 (2) (d) 1. a. of the statutes is amended to read:

30.681 **(2)** (d) 1. a. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a motorboat that is not a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of 0.08 or more or a tetrahydrocannabinols concentration of 5.0 or more or a detectable amount of a restricted controlled substance in his or her blood.

SECTION 60. 30.681 (2) (d) 1. b. of the statutes is amended to read:

30.681 **(2)** (d) 1. b. In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence

that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~.

SECTION 61. 30.681 (2) (d) 1. c. of the statutes is created to read:

30.681 **(2)** (d) 1. c. In an action under par. (b) 1g. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 62. 30.684 (4) of the statutes is amended to read:

30.684 **(4)** ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated boating law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations or tetrahydrocannabinols concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

SECTION 63. 30.80 (6) (d) of the statutes is amended to read:

30.80 **(6)** (d) *Alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols; examination.* In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court

to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

SECTION 64. 49.148 (4) (a) of the statutes is amended to read:

49.148 **(4)** (a) A Wisconsin ~~works~~ Works agency shall require a participant in a community service job or transitional placement who, after August 22, 1996, was convicted in any state or federal court of a felony that had as an element possession, use or distribution of a controlled substance to submit to a test for use of a controlled substance as a condition of continued eligibility. If the test results are positive, the Wisconsin ~~works~~ Works agency shall decrease the presanction benefit amount for that participant by not more than 15 percent for not fewer than 12 months, or for the remainder of the participant's period of participation in a community service job or transitional placement, if less than 12 months. If, at the end of 12 months, the individual is still a participant in a community service job or transitional placement and submits to another test for use of a controlled substance and if the results of the test are negative, the Wisconsin ~~works~~ Works agency shall discontinue the reduction under this paragraph. In this subsection, "controlled substance" does not include tetrahydrocannabinols in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana, or chemically synthesized.

SECTION 65. 49.45 (23) (g) 5. of the statutes is amended to read:

49.45 **(23)** (g) 5. Require, as a condition of eligibility, that an applicant or enrollee submit to a drug screening assessment and, if indicated, a drug test, as specified by the department in the waiver amendment. The department may not test

under this subdivision for tetrahydrocannabinols in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana, or chemically synthesized.

SECTION 66. 49.79 (1) (b) of the statutes is amended to read:

49.79 **(1)** (b) "Controlled substance" has the meaning given in 21 USC 802 (6), except "controlled substance" does not include tetrahydrocannabinols in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana, or chemically synthesized.

SECTION 67. 50.56 (3) of the statutes is amended to read:

50.56 **(3)** Notwithstanding sub. (2), insofar as a conflict exists between this subchapter, or the rules promulgated under this subchapter, and subch. I, II or ~~VI~~ VII, or the rules promulgated under subch. I, II or ~~VI~~ VII, the provisions of this subchapter and the rules promulgated under this subchapter control.

SECTION 68. Subchapter VI of chapter 50 [precedes 50.80] of the statutes is created to read:

CHAPTER 50

SUBCHAPTER VI

DISTRIBUTION AND

TESTING CENTERS

50.80 Definitions. In this subchapter:

(1) "Compassion center" means a licensed organization that grows, sells, distributes, or delivers marijuana for the medical use of tetrahydrocannabinols.

(2) "Debilitating medical condition or treatment" means 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.

(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.

(c) Any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the department under s. 50.81 (2).

(2m) "Department" means the department of health services.

(3) "Maximum medicinal amount" means 6 live marijuana plants and 3 ounces of usable marijuana.

(4) "Medical use of tetrahydrocannabinols" means any of the following:

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

(b) The acquisition, possession, cultivation, or transportation of tetrahydrocannabinols in any form by a qualifying patient if done to facilitate his or her use of tetrahydrocannabinols under par. (a).

(c) The acquisition, possession, cultivation, or transportation of tetrahydrocannabinols in any form by a primary caregiver of a qualifying patient, the transfer of tetrahydrocannabinols in any form between a qualifying patient and his or her primary caregiver, or the transfer of tetrahydrocannabinols in any form

between persons who are primary caregivers for the same qualifying patient if all of the following apply:

1. The acquisition, possession, cultivation, or transportation of tetrahydrocannabinols is done to facilitate the qualifying patient's use of tetrahydrocannabinols under par. (a) or (b).

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

(4m) "Physician" means a person licensed under s. 448.04 (1) (a).

(5) "Primary caregiver" means a person who is at least 18 years of age and who has agreed to help a qualifying patient in his or her medical use of tetrahydrocannabinols.

(6) "Qualifying patient" means a person who has been diagnosed by a physician as having or undergoing a debilitating medical condition or treatment but does not include a person under the age of 18 years unless all of the following apply:

(a) The person's physician has explained the potential risks and benefits of the medical use of tetrahydrocannabinols to the person and to a parent, guardian, or individual who has legal custody of the person.

(b) The parent, guardian, or individual who has legal custody of the person provides the physician a written statement consenting to do all of the following:

1. Allow the person's medical use of tetrahydrocannabinols.

2. Serve as a primary caregiver for the person.

3. Manage the person's medical use of tetrahydrocannabinols.

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

(8) "Treatment team" means a qualifying patient and his or her primary caregivers.

(9) "Usable marijuana" has the meaning given in s. 139.97 (13).

(10) "Written certification" means a statement made by a person's physician if all of the following apply:

(a) The statement 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 tetrahydrocannabinols under sub. (4) (a) would likely outweigh the health risks for the person.

(b) The statement indicates that the opinion described in par. (a) was formed after a full assessment, conducted no more than 6 months prior to making the statement and made in the course of a bona fide physician–patient relationship, of the person's medical history and current medical condition.

(c) The statement is signed by the physician or is contained in the person's medical records.

(d) The statement contains an expiration date that is no more than 48 months after issuance and the statement has not expired.

50.81 Departmental powers and duties. (1) The department shall provide licensing, regulation, record keeping, and security for compassion centers.

(2) Notwithstanding s. 227.12 (1), any person may petition the department to promulgate a rule to designate a medical condition or treatment as a debilitating medical condition or treatment. The department shall promulgate rules providing for public notice of and a public hearing regarding any such petition, with the public hearing providing persons an opportunity to comment upon the petition. After the hearing, but no later than 180 days after the submission of the petition, the

department shall approve or deny the petition. The department's decision to approve or deny a petition is subject to judicial review under s. 227.52.

50.82 Licensing. The department shall issue licenses to a pharmacist or a pharmacy to operate as a compassion center and shall decide which and how many applicants for a license receive a license based on all of the following:

(1) The ability of an applicant to provide to treatment teams a sufficient amount of medical marijuana for the medical use of tetrahydrocannabinols.

(2) The experience the applicant has running an organization or a business.

(3) The preferences of the governing bodies with jurisdiction over the area in which the applicants are located.

(4) The ability of the applicant to keep records confidential and maintain a safe and secure facility.

(5) The ability of the applicant to abide by the prohibitions under s. 50.83.

50.83 Prohibitions. The department may not issue a license to operate as a compassion center to, and must revoke a license of, any organization to which any of the following applies:

(1) The organization is located within 500 feet of a public or private elementary or secondary school, including a charter school.

(2) The compassion center distributes to a treatment team a number of plants or an amount in ounces of usable marijuana that, in the period of distribution, results in the treatment team possessing more than the maximum medicinal amount.

(3) The compassion center possesses a number of plants or an amount in ounces of usable marijuana that exceeds the combined maximum medicinal amount for all of the treatment teams that are estimated to use the organization by a number or an amount determined by the department by rule to be unacceptable.

50.84 Licensing procedure. (1) The application for a license must be in writing on a form provided by the department and include the licensing application fee under sub. (2) (a).

(2) (a) A licensing application fee is $250.

(b) The annual fee for a compassion center is $5,000.

(3) A compassion center license is valid until revoked. Each license shall be issued only for the applicant named in the application and may not be transferred or assigned.

50.85 Distribution of medical marijuana. (1) A compassion center may sell, distribute, or deliver tetrahydrocannabinols or drug paraphernalia intended for the storage or use of usable marijuana to a member of a treatment team if the compassion center receives a copy of the qualifying patient's written certification or registry identification card.

(2) A compassion center may possess or manufacture tetrahydrocannabinols or drug paraphernalia with the intent to sell, distribute, or deliver under sub. (1).

(3) A compassion center may have 2 locations, one for cultivation and one for sales, distribution, or delivery.

(4) A compassion center shall have all tetrahydrocannabinols tested for mold, fungus, pesticides, and other contaminants and may not sell, distribute, or deliver tetrahydrocannabinols that test positive for mold, fungus, pesticides, or other contaminants if the contaminants, or level of contaminants, are identified by the testing laboratories under s. 50.86 (2) to be potentially unsafe to a qualifying patient's health.

(5) A compassion center may cultivate marijuana outdoors.

50.86 Testing laboratories. The department shall register entities as tetrahydrocannabinols testing laboratories. The laboratories may possess or manufacture tetrahydrocannabinols or drug paraphernalia and shall perform the following services:

(1) Test marijuana produced for the medical use of tetrahydrocannabinols for potency and for mold, fungus, pesticides, and other contaminants.

(2) Collect information on research findings and conduct research related to the medical use of tetrahydrocannabinols, including research that identifies potentially unsafe levels of contaminants.

(3) Provide training to persons who hold registry identification cards or written certifications, to treatment teams, and to persons employed by compassion centers on the following:

(a) The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana for the medical use of tetrahydrocannabinols.

(b) Security and inventory accountability procedures.

(c) The most recent research on the medical use of tetrahydrocannabinols.

SECTION 69. Subchapter VI (title) of chapter 50 [precedes 50.90] of the statutes is renumbered subchapter VII (title) of chapter 50 [precedes 50.90].

SECTION 70. 51.49 (1) (d) of the statutes is amended to read:

51.49 **(1)** (d) "Operating while intoxicated" means a violation of s. 346.63 (1) ~~or~~, (2m)<u>, or (2p)</u> or a local ordinance in conformity therewith or of s. 346.63 (2) or (6), 940.09 (1) or 940.25.

SECTION 71. 59.54 (25) (title) of the statutes is amended to read:

59.54 **(25)** (title) ~~POSSESSION~~ <u>REGULATION</u> OF MARIJUANA.

SECTION 72. 59.54 (25) (a) (intro.) of the statutes is amended to read:

59.54 **(25)** (a) (intro.) The board may enact and enforce an ordinance ~~to prohibit the possession of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance~~ that is consistent with s. 961.71 or 961.72; except that if a complaint is issued ~~regarding an allegation of possession of more than 25 grams of marijuana, or possession of any amount of marijuana following a conviction in this state for possession of marijuana~~ alleging a violation of s. 961.72 (2) (b) 2., (c) 3., or (d) 4., the subject of the complaint may not be prosecuted under this subsection for the same action that is the subject of the complaint unless all of the following occur:

SECTION 73. 66.0107 (1) (bm) of the statutes is amended to read:

66.0107 **(1)** (bm) Enact and enforce an ordinance ~~to prohibit the possession of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance~~ that is consistent with s. 961.71 or 961.72; except that if a complaint is issued ~~regarding an allegation of possession of more than 25 grams of marijuana, or possession of any amount of marijuana following a conviction in this state for possession of marijuana~~ alleging a violation of s. 961.72 (2) (b) 2., (c) 3., or (d) 4., the subject of the complaint may not be prosecuted under this paragraph for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

SECTION 74. 66.0414 of the statutes is created to read:

66.0414 Cultivation of tetrahydrocannabinols. No city, village, town, or county may prohibit cultivating tetrahydrocannabinols outdoors if the cultivation is by one of the following:

(1) A compassion center, as defined in s. 50.80 (1).

(2) A person who is cultivating tetrahydrocannabinols for the medical use of tetrahydrocannabinols, as defined in s. 50.80 (4), if the amount does not exceed the maximum medicinal amount, as defined in s. 50.80 (3).

(3) An individual who has no more than 6 marijuana plants at one time for his or her personal use.

SECTION 75. 77.52 (13) of the statutes is amended to read:

77.52 **(13)** For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser an electronic or a paper certificate, in a manner prescribed by the department, to the effect that the property, item, good, or service is purchased for resale or is otherwise exempt, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), (66), ~~and~~ (67)<u>, and (69)</u>.

SECTION 76. 77.53 (10) of the statutes is amended to read:

77.53 **(10)** For the purpose of the proper administration of this section and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services sold by any person for delivery in this state is sold for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless that person

takes from the purchaser an electronic or paper certificate, in a manner prescribed by the department, to the effect that the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise exempt from the tax, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), ~~and~~ (67)<u>, and (69)</u>.

SECTION 77. 77.54 (69) of the statutes is created to read:

77.54 **(69)** The sales price from the sale of and the storage, use, or other consumption of usable marijuana, as defined in s. 139.97 (13), provided by a compassion center, as defined in s. 50.80 (1).

SECTION 78. 94.56 of the statutes is created to read:

94.56 Marijuana producers and processors. (1) DEFINITIONS. In this section:

(a) "Labor peace agreement" means an agreement between a person applying for a permit under this section and a labor organization, as defined in s. 5.02 (8m), that does all of the following:

1. Prohibits labor organizations and its members from engaging in picketing, work stoppages, boycotts, and any other economic interference with persons doing business in this state.

2. Prohibits the applicant from disrupting the efforts of the labor organization to communicate with and to organize and represent the applicant's employees.

3. Provides the labor organization access at reasonable times to areas in which the applicant's employees work for the purpose of meeting with employees to discuss

their right to representation, employment rights under state law, and terms and conditions of employment.

(b) "Marijuana" has the meaning given in s. 961.70 (3).

(c) "Marijuana processor" has the meaning given in s. 139.97 (6).

(d) "Marijuana producer" has the meaning given in s. 139.97 (7).

(e) "Usable marijuana" has the meaning given in s. 139.97 (13).

(f) "Permittee" means a marijuana producer or marijuana processor who is issued a permit under this section.

(2) PERMIT REQUIRED. (a) No person may operate in this state as a marijuana producer or marijuana processor without a permit from the department. A person who acts as a marijuana producer and a marijuana processor shall obtain a separate permit for each activity. A person is not required to obtain a permit under this section if the person produces or processes only industrial hemp and holds a valid license under s. 94.55.

(b) This subsection applies to all officers, directors, agents, and stockholders holding 5 percent or more of the stock of any corporation applying for a permit under this section.

(c) Subject to ss. 111.321, 111.322, and 111.335, a permit under this section may not be granted to any person to whom any of the following applies:

1. The person has been convicted of a violent misdemeanor, as defined in s. 941.29 (1g) (b), at least 3 times.

2. The person has been convicted of a violent felony, as defined in s. 941.29 (1g) (a), unless pardoned.

3. During the preceding 3 years, the person has been committed under s. 51.20 for being drug dependent.

4. The person chronically and habitually uses alcohol beverages or other substances to the extent that his or her normal faculties are impaired. A person is presumed to chronically and habitually use alcohol beverages or other substances to the extent that his or her normal faculties are impaired if, within the preceding 3 years, any of the following applies:

a. The person has been committed for involuntary treatment under s. 51.45 (13).

b. The person has been convicted of a violation of s. 941.20 (1) (b).

c. In 2 or more cases arising out of separate incidents, a court has found the person to have committed a violation of s. 346.63 or a local ordinance in conformity with that section; a violation of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63; or a violation of the law of another jurisdiction, as defined in s. 340.01 (41m), that prohibits use of a motor vehicle while intoxicated, while 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, as those or substantially similar terms are used in that jurisdiction's laws.

5. The person has income that comes principally from gambling or has been convicted of 2 or more gambling offenses.

6. The person has been guilty of crimes relating to prostitution.

7. The person has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to ch. 125.

8. The person is under the age of 21.

9. The person has not been a resident of this state continuously for at least 90 days prior to the application date.

(cm) Notwithstanding ss. 66.0134 and 947.21, an applicant with 20 or more employees may not receive a permit under this section unless the applicant certifies to the department that the applicant has entered into a labor peace agreement and will abide by the terms of the agreement as a condition of maintaining a valid permit under this section. The applicant shall submit to the department a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant.

(cn) The department shall use a competitive scoring system to determine which applicants are eligible to receive a permit under this section. The department shall issue permits to the highest scoring applicants that it determines will best protect the environment; provide stable, family–supporting jobs to local residents; ensure worker and consumer safety; operate secure facilities; and uphold the laws of the jurisdictions in which they operate. The department may deny a permit to an applicant with a low score, as determined under this paragraph. The department may request that the applicant provide any information or documentation that the department deems necessary for purposes of making a determination under this paragraph.

(d) 1. Before the department issues a new or renewed permit under this section, the department shall 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 or marijuana processor. No later than 30 days after the department submits the notice, the governing body of the municipality may file with

the department a written objection to granting or renewing the permit. At the municipality's request, the department may extend the period for filing objections.

2. A written objection filed under subd. 1. shall 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 under this paragraph, the department shall give substantial weight to objections from a municipality based on chronic illegal activity associated with the premises for which the applicant seeks a permit, the premises of any other operation in this state for which the applicant holds or has held a valid permit or license, 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 local zoning ordinances. In this subdivision, "chronic illegal activity" means a pervasive pattern of activity that threatens the public health, safety, and welfare of the municipality, including any crime or ordinance violation, and is documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar law enforcement agency records.

(e) After denying a permit, the department shall 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 has filed an objection under par. (d), the department shall immediately notify the governing body of the municipality in writing of its decision and the reasons for the decision.

(f) 1. The department's denial of a permit under this section is subject to judicial review under ch. 227.

2. The department's decision to grant a permit under this section regardless of an objection filed under par. (d) is subject to judicial review under ch. 227.

(g) The department shall not issue a permit under this section to any person who does not hold a valid certificate under s. 73.03 (50).

(3) FEES; TERM. (a) Each person who applies for a permit under this section shall submit with the application a $250 fee. A permit issued under this section is valid for one year and may be renewed, except that the department may revoke or suspend a permit prior to its expiration. A person is not entitled to a refund of the fees paid under this subsection if the person's permit is denied, revoked, or suspended.

(b) A permittee shall annually pay to the department a fee for as long as the person holds a valid permit under this section. The annual fee for a marijuana processor permittee is $2,000. The annual fee for a marijuana producer permittee is one of the following, unless the department, by rule, establishes a higher amount:

1. If the permittee plants, grows, cultivates, or harvests not more than 1,800 marijuana plants, $1,800.

2. If the permittee plants, grows, cultivates, or harvests more than 1,800 but not more than 3,600 marijuana plants, $2,900.

3. If the permittee plants, grows, cultivates, or harvests more than 3,600 but not more than 6,000 marijuana plants, $3,600.

4. If the permittee plants, grows, cultivates, or harvests more than 6,000 but not more than 10,200 marijuana plants, $5,100.

5. If the permittee plants, grows, cultivates, or harvests more than 10,200 marijuana plants, $7,100 plus $800 for every 3,600 marijuana plants over 10,200.

(4) SCHOOLS. The department may not issue a permit under this section to operate as a marijuana producer within 500 feet of the perimeter of the grounds of any elementary or secondary school.

(5) EDUCATION AND AWARENESS CAMPAIGN. The department shall develop and make available training programs for marijuana producers on how to safely and efficiently plant, grow, cultivate, harvest, and otherwise handle marijuana, and for marijuana processors on how to safely and efficiently produce and handle marijuana products and test marijuana for contaminants. The department shall conduct an awareness campaign to inform potential marijuana producers and marijuana processors of the availability and viability of marijuana as a crop or product in this state.

(6) RULES. The department shall promulgate rules necessary to administer and enforce this section, including rules relating to the inspection of the plants, facilities, and products of permittees and training requirements for employees of permittees.

(7) PENALTIES. (a) Any person who violates the requirements under sub. (2) or (3) or any of the requirements established by the rules promulgated under sub. (6) shall be fined not less than $100 nor more than $500 or imprisoned not more than 6 months or both.

(b) In addition to the penalties imposed under par. (a), the department shall revoke the permit of any person convicted of any violation described under par. (a) and not issue another permit to that person for a period of 2 years following the revocation.

SECTION 79. 100.145 of the statutes is created to read:

100.145 Recreational marijuana logotype. The department shall design an official logotype, appropriate for including on a label affixed to recreational marijuana under s. 139.973 (10) (a). The department shall design the logotype to be distinguishable from any logotype for medical marijuana.

SECTION 80. 108.02 (18r) of the statutes is created to read:

108.02 **(18r)** MARIJUANA. "Marijuana" has the meaning given in s. 111.32 (11m).

SECTION 81. 108.04 (5m) of the statutes is created to read:

108.04 **(5m)** DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5), "misconduct," for purposes of sub. (5), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

(b) Notwithstanding sub. (5g), "substantial fault," for purposes of sub. (5g), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

SECTION 82. 108.133 (1) (a) of the statutes is renumbered 108.133 (1) (a) 1. and amended to read:

108.133 **(1)** (a) 1. Notwithstanding s. 108.02 (9), "controlled substance" has the meaning given in 21 USC 802<u>, except as provided in subd. 2</u>.

SECTION 83. 108.133 (1) (a) 2. of the statutes is created to read:

108.133 **(1)** (a) 2. "Controlled substance" does not include tetrahydrocannabinols, commonly known as "THC," in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana, or chemically synthesized.

SECTION 84. 111.32 (9m) of the statutes is created to read:

111.32 **(9m)** "Lawful product" includes marijuana.

SECTION 85. 111.32 (11m) of the statutes is created to read:

111.32 **(11m)** "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; 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, including tetrahydrocannabinols.

SECTION 86. 111.35 (2) (e) of the statutes is amended to read:

111.35 **(2)** (e) Conflicts with any federal or state statute, rule or regulation. <u>This paragraph does not apply with respect to violations concerning marijuana or tetrahydrocannabinols under 21 USC 841 to 865.</u>

SECTION 87. 114.09 (2) (bm) 1. (intro.) of the statutes is amended to read:

114.09 **(2)** (bm) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall order the person violating sub. (1) (b) 1. or 1m. to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, <u>tetrahydrocannabinols,</u> controlled substances, or controlled substance analogs and development of an airman safety plan for the person. The court shall notify the person, the department, and the proper federal agency of the assessment order. The assessment order shall:

SECTION 88. 114.09 (2) (bm) 4. of the statutes is amended to read:

114.09 **(2)** (bm) 4. The assessment report shall order compliance with an airman safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The safety plan may include treatment for the person's misuse, abuse, or dependence on alcohol, <u>tetrahydrocannabinols,</u> controlled substances, or controlled substance analogs. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. An airman safety plan under this paragraph shall include a termination date consistent with the plan that shall not extend beyond one year. The county department under

s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and treatment.

SECTION 89. 115.35 (1) of the statutes is renumbered 115.35 (1) (a) (intro.) and amended to read:

115.35 **(1)** (a) (intro.) A critical health problems education program is established in the department. The program shall be a systematic and integrated program designed to provide appropriate learning experiences based on scientific knowledge of the human organism as it functions within its environment and designed to favorably influence the health, understanding, attitudes and practices of the individual child which will enable him or her to adapt to changing health problems of our society. The program shall be designed to educate youth with regard to critical health problems and shall include, but not be limited to, the following topics as the basis for comprehensive education curricula in all elementary and secondary schools: ~~controlled~~

1. Controlled substances, as defined in s. 961.01 (4); controlled substance analogs, as defined in s. 961.01 (4m); alcohol; and tobacco~~; mental~~.

2. Mental health~~; sexually~~.

3. Sexually transmitted diseases, including acquired immunodeficiency syndrome~~; human~~.

4. Human growth and development~~; and~~.

5. Other related health and safety topics as determined by the department.

(b) Participation in the human growth and development topic of the curricula described in par. (a) shall be entirely voluntary. The department may not require a school board to use a specific human growth and development curriculum.

SECTION 90. 115.35 (1) (a) 6. of the statutes is created to read:

115.35 **(1)** (a) 6. Beginning in the 2019–20 school year, the program shall also include scientific, evidence–based and grade–level–appropriate information about the common uses of marijuana, how marijuana use affects an individual's behavior, body, and brain, and the health and behavior risks associated with marijuana use and abuse.

SECTION 91. 121.02 (1) (L) 8. of the statutes is created to read:

121.02 **(1)** (L) 8. Beginning in the 2019–20 school year, as part of the health curriculum, in one of grades 5 to 8 and in one of grades 9 to 12, provide pupils with the instruction about marijuana described in s. 115.35 (1) (a) 6.

SECTION 92. Subchapter IV of chapter 139 [precedes 139.97] of the statutes is created to read:

CHAPTER 139

SUBCHAPTER IV

MARIJUANA TAX AND REGULATION

139.97 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "Lot" means 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.

(3) "Lot number" means a number that specifies the person who holds a valid permit under this subchapter and the harvesting or processing date for each lot.

(4) "Marijuana" has the meaning given in s. 961.70 (3).

(5) "Marijuana distributor" means 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 or to a compassion center, as defined in s. 50.80 (1), for the purpose of resale to consumers.

(6) "Marijuana processor" means a person in this state who processes marijuana into usable marijuana, packages and labels usable marijuana for sale in retail outlets or in compassion centers, as defined in s. 50.80 (1), and sells at wholesale or otherwise transfers usable marijuana to marijuana distributors.

(7) "Marijuana producer" means a person in this state who produces marijuana and sells it at wholesale or otherwise transfers it to marijuana processors.

(8) "Marijuana retailer" means a person in this state that sells usable marijuana at a retail outlet, not including a compassion center, as defined in s. 50.80 (1).

(9) "Microbusiness" means a marijuana producer that produces marijuana in one area that is less than 10,000 square feet and who also operates as any 2 of the following:

(a) A marijuana processor.

(b) A marijuana distributor.

(c) A marijuana retailer.

(10) "Permittee" means a marijuana producer, marijuana processor, marijuana distributor, marijuana retailer, or microbusiness that is issued a permit under s. 139.972.

(11) "Retail outlet" means a location for the retail sale of usable marijuana.

(12) "Sales price" has the meaning given in s. 77.51 (15b).

(13) "Usable marijuana" means marijuana that has been processed for human consumption and includes dried marijuana flowers, marijuana–infused products, and marijuana edibles.

139.971 Marijuana tax. (1) (a) An excise tax is imposed on a marijuana producer at the rate of 15 percent of the sales price on each wholesale sale or transfer in this state of marijuana to a marijuana processor. This paragraph applies to a microbusiness that transfers marijuana to a processing operation within the microbusiness.

(b) An excise tax is imposed on a marijuana retailer at the rate of 10 percent of the sales price on each retail sale in this state of usable marijuana.

(2) Each person liable for the taxes imposed under sub. (1) shall pay the taxes to the department no later than the 15th day of the month following the month in which the person's tax liability is incurred and shall include with the payment a return on a form prescribed by the department.

(3) For purposes of this section, a marijuana producer may not sell marijuana directly to a marijuana distributor or marijuana retailer, and a marijuana retailer may purchase usable marijuana for resale only from a marijuana distributor. This subsection does not apply to a microbusiness that transfers marijuana or usable marijuana to another operation with the microbusiness.

139.972 Permits required. (1) (a) No person may operate in this state as a marijuana producer, marijuana processor, marijuana distributor, marijuana retailer, or microbusiness without first filing an application for and obtaining the proper permit from the department to perform such operations. In addition, no person may operate in this state as a marijuana producer or marijuana processor without first filing an application for and obtaining the proper permit under s. 94.56.

(b) This section applies to all officers, directors, agents, and stockholders holding 5 percent or more of the stock of any corporation applying for a permit under this section.

(c) Subject to ss. 111.321, 111.322, and 111.335, a permit under this section may not be granted to any person to whom any of the following applies:

1. The person has been convicted of a violent misdemeanor, as defined in s. 941.29 (1g) (b), at least 3 times.

2. The person has been convicted of a violent felony, as defined in s. 941.29 (1g) (a), unless pardoned.

3. During the preceding 3 years, the person has been committed under s. 51.20 for being drug dependent.

4. The person chronically and habitually uses alcohol beverages or other substances to the extent that his or her normal faculties are impaired. A person is presumed to chronically and habitually use alcohol beverages or other substances to the extent that his or her normal faculties are impaired if, within the preceding 3 years, any of the following applies:

a. The person has been committed for involuntary treatment under s. 51.45 (13).

b. The person has been convicted of a violation of s. 941.20 (1) (b).

c. In 2 or more cases arising out of separate incidents, a court has found the person to have committed a violation of s. 346.63 or a local ordinance in conformity with that section; a violation of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63; or a violation of the law of another jurisdiction, as defined in s. 340.01 (41m), that prohibits use of a motor vehicle while intoxicated, while 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, as those or substantially similar terms are used in that jurisdiction's laws.

5. The person has income that comes principally from gambling or has been convicted of 2 or more gambling offenses.

6. The person has been guilty of crimes relating to prostitution.

7. The person has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to ch. 125.

8. The person is under the age of 21.

9. The person has not been a resident of this state continuously for at least 90 days prior to the application date.

(cm) Notwithstanding ss. 66.0134 and 947.21, an applicant with 20 or more employees may not receive a permit under this section to operate as a marijuana distributor or marijuana retailer unless the applicant certifies to the department that the applicant has entered into a labor peace agreement, as defined in s. 94.56 (1) (a), and will abide by the terms of the agreement as a condition of maintaining a valid permit under this section. The applicant shall submit to the department a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant.

(cn) The department shall use a competitive scoring system to determine which applicants are eligible to receive a permit under this section. The department shall issue permits to the highest scoring applicants that it determines will best protect the environment; provide stable, family–supporting jobs to local residents; ensure worker and consumer safety; operate secure facilities; and uphold the laws of the jurisdictions in which they operate. The department may deny a permit to an applicant with a low score, as determined under this paragraph. The department

may request that the applicant provide any information or documentation that the department deems necessary for purposes of making a determination under this paragraph.

(d) 1. Before the department issues a new or renewed permit under this section, the department shall 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, marijuana processor, marijuana distributor, marijuana retailer, or microbusiness. No later than 30 days after the department submits the notice, the governing body of the municipality may file with the department a written objection to granting or renewing the permit. At the municipality's request, the department may extend the period for filing objections.

2. A written objection filed under subd. 1. shall 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 under this paragraph, the department shall give substantial weight to objections from a municipality based on chronic illegal activity associated with the premises for which the applicant seeks a permit, the premises of any other operation in this state for which the applicant holds or has held a valid permit or license, 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 local zoning ordinances. In this subdivision, "chronic illegal activity" means a pervasive pattern of activity that threatens the public health, safety, and welfare of the municipality, including any crime or ordinance violation, and is documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar law enforcement agency records.

(e) After denying a permit, the department shall 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 has filed an objection under par. (d), the department shall immediately notify the governing body of the municipality in writing of its decision and the reasons for the decision.

(f) 1. The department's denial of a permit under this section is subject to judicial review under ch. 227.

2. The department's decision to grant a permit under this section regardless of an objection filed under par. (d) is subject to judicial review under ch. 227.

(g) The department shall not issue a permit under this section to any person who does not hold a valid certificate under s. 73.03 (50).

(2) Each person who applies for a permit under this section shall submit with the application a $250 fee. Each person who is granted a permit under this section shall annually pay to the department a $2,000 fee for as long as the person holds a valid permit under this section. A permit issued under this section is valid for one year and may be renewed, except that the department may revoke or suspend a permit prior to its expiration. A person is not entitled to a refund of the fees paid under this subsection if the person's permit is denied, revoked, or suspended.

(3) The department may not issue a permit under this section to operate any premises which are 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.

(4) Under this section, a separate permit is required for and issued to each class of permittee, and the permit holder may perform only the operations authorized by the permit. A permit issued under this section is not transferable from one person

to another or from one premises to another. A separate permit is required for each place in this state where the operations of a marijuana producer, marijuana processor, marijuana distributor, marijuana retailer, or microbusiness occur, including each retail outlet. No 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, shall be issued a permit to operate as a marijuana producer, marijuana processor, or marijuana distributor. A person who has been issued a permit to operate as a microbusiness is not required to hold separate permits to operate as a marijuana processor, marijuana distributor, or marijuana retailer, but shall specify on the person's application for a microbusiness permit the activities that the person will be engaged in as a microbusiness.

(5) Each person issued a permit under this section shall post the permit in a conspicuous place on the premises to which the permit relates.

139.973 Regulation. (1) (a) No permittee may employ an individual who is under the age of 21 to work in the business to which the permit relates.

(b) Subject to ss. 111.321, 111.322, and 111.335, no permittee may employ an individual if any of the conditions under s. 139.972 (1) (c) 1. to 7. applies to the individual.

(2) A retail outlet shall sell no products or services other than usable marijuana or paraphernalia intended for the storage or use of usable marijuana.

(3) No marijuana retailer may allow a person who is under the age of 21 to enter or be on the premises of a retail outlet in violation of s. 961.71 (2m).

(4) The maximum amount of usable marijuana that a retail outlet may sell to an individual consumer in a single transaction may not exceed the permissible amount under s. 961.70 (5).

(4m) A marijuana retailer may not collect, retain, or distribute personal information regarding the retailer's customers except that which is necessary to complete a sale of usable marijuana.

(5) No marijuana retailer may display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right–of–way, other than a single sign that is no larger than 1,600 square inches identifying the retail outlet by the permittee's business or trade name.

(6) No marijuana retailer may display usable marijuana in a manner that is visible to the general public from a public right–of–way.

(7) No marijuana retailer or employee of a retail outlet may consume, or allow to be consumed, any usable marijuana on the premises of the retail outlet.

(7m) A marijuana retailer may operate a retail outlet only between the hours of 8 a.m. and 8 p.m.

(8) Except as provided under sub. (5), no marijuana producer, marijuana processor, marijuana distributor, marijuana retailer, or microbusiness may place or maintain, or cause to be placed or maintained, an advertisement of usable marijuana in any form or through any medium.

(9) (a) On a schedule determined by the department, every marijuana producer, marijuana processor, or microbusiness shall submit representative samples of the marijuana and usable marijuana produced or processed by the marijuana producer, marijuana processor, or microbusiness to a testing laboratory registered under s. 50.86 for testing marijuana and usable marijuana in order to certify that the marijuana and usable marijuana comply with standards prescribed by the department by rule, including testing for potency and for mold, fungus,

pesticides, and other contaminants. The laboratory testing the sample shall destroy any part of the sample that remains after the testing.

(b) Marijuana producers, marijuana processors, and microbusinesses shall submit the results of the testing provided under par. (a) to the department in the manner prescribed by the department by rule.

(c) If a representative sample tested under par. (a) does not meet the standards prescribed by the department, the department shall take the necessary action to ensure that the entire lot from which the sample was taken is destroyed. The department shall promulgate rules to determine lots and lot numbers for purposes of this subsection and for the reporting of lots and lot numbers to the department.

(10) (a) A marijuana processor or a microbusiness that operates as a marijuana processor shall affix a label to all usable marijuana that the marijuana processor or microbusiness sells to marijuana distributors. The label may not be designed to appeal to persons under the age of 18. The label shall include all of the following:

1. The ingredients and the tetrahydrocannabinols concentration in the usable marijuana.

2. The producer's business or trade name.

3. The licensee or registrant number.

4. The unique identification number.

5. The harvest date.

6. The strain name and product identity.

7. The net weight.

8. The activation time.

9. The name of laboratory performing any test, the test batch number, and the test analysis dates.

10. The logotype for recreational marijuana developed by the department of agriculture, trade and consumer protection under s. 100.145, or the logotype for medical marijuana developed by the department of health services under s. 146.46, whichever is appropriate.

11. Warnings about all of the following:

a. Risks of marijuana use and pregnancy and risks of marijuana use by persons under the age of 18.

b. The prohibitions under ss. 23.33 (4c) (a) 2g. and 3g. and (b) 2n., 30.681 (1) (b) 1g. and (bn) 2. and (2) (b) 1g., 343.10 (5) (a) 2., 343.12 (7) (a) 11., 346.63 (1) (b), (2) (a) 2., and (2p), and 350.101 (1) (bg) and (cg) and (2) (bg).

(b) No marijuana processor or microbusiness that operates as a marijuana processor may make usable marijuana using marijuana grown outside this state. The label on each package of usable marijuana may indicate that the usable marijuana is made in this state.

(11) (a) No permittee may sell marijuana or usable marijuana that contains more than 3 parts tetrahydrocannabinols to one part cannabidiol.

(b) No permittee may sell marijuana or usable marijuana that tests positive under sub. (9) (a) 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.

(12) Immediately after beginning employment with a permittee, every employee of a permittee shall receive training, approved by the department, on the safe handling of marijuana and usable marijuana and on security and inventory accountability procedures.

139.974 Records and reports. (1) Every permittee shall keep accurate and complete records of the production and sales of marijuana and usable marijuana in this state. The records shall 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 the department's authorized personnel. The department shall prescribe reasonable and uniform methods of keeping records and making reports and shall provide the necessary forms to permittees.

(2) If the department determines that any permittee's records are not kept in the prescribed form or are in such condition that the department requires an unusual amount of time to determine from the records the amount of the tax due, the department shall give notice to the permittee that the permittee is required to revise the permittee's records and keep them in the prescribed form. If the permittee fails to comply within 30 days, the permittee shall pay the expenses reasonably attributable to a proper examination and tax determination at the rate of $30 a day for each auditor used to make the examination and determination. The department shall send a bill for such expenses, and the permittee shall pay the amount of such bill within 10 days.

(3) If any permittee fails to file a report when due, the permittee shall be required to pay a late filing fee of $10. A report that is mailed is filed on time if it is mailed in a properly addressed envelope with postage prepaid, the envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due, and the report is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A report that is not mailed is timely if it is received on or before the due date by the department or at the destination that the

department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(4) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m., relating to confidentiality of income, franchise, and gift tax returns, apply to any information obtained from any permittee under this subchapter on a tax return, report, schedule, exhibit, or other document or from an audit report relating to any of those documents, except that the department shall publish production and sales statistics.

139.975 Administration and enforcement. (1) The department shall administer and enforce this subchapter and promulgate rules necessary to administer and enforce this subchapter.

(2) The duly authorized employees of the department have all necessary police powers to prevent violations of this subchapter.

(3) Authorized personnel of the department of justice and the department of revenue, and any law enforcement officer, within their respective jurisdictions, may at all reasonable hours enter the premises of any permittee and examine the books and records to determine whether the tax imposed by this subchapter 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 this subchapter.

(4) The department may suspend or revoke the permit of any permittee who violates s. 100.30, any provision of this subchapter, or any rules promulgated under sub. (1). The department shall revoke the permit of any permittee who violates s. 100.30 3 or more times within a 5–year period.

(5) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in s. 139.971. The aggrieved taxpayer shall pay the tax

when due and, if paid under protest, may at any time within 90 days from the date of payment sue the state to recover the tax paid. If it is finally determined that any part of the tax was wrongfully collected, the secretary of administration shall pay the amount wrongfully collected. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

(6) (a) Any person may be compelled to testify in regard to any violation of this subchapter of which the person may have knowledge, even though such testimony may tend to incriminate the person, upon being granted immunity from prosecution in connection with the testimony, and upon the giving of such testimony, the person shall not be prosecuted because of the violation relative to which the person has testified.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(7) The provisions on timely filing under s. 71.80 (18) apply to the tax imposed under this subchapter.

(8) Sections 71.74 (1), (2), (10), (11), and (14), 71.77, 71.91 (1) (a) and (c) and (2) to (7), 71.92, and 73.0301 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the collection of the taxes under ch. 71 applies to the collection of the taxes under this subchapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this subchapter.

(9) Any building or place of any kind where marijuana or usable marijuana is sold, possessed, stored, or manufactured without a lawful permit or in violation of

s. 139.972 or 139.973 is declared a public nuisance and may be closed and abated as such.

(10) At the request of the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

(11) The tax imposed under this subchapter does apply to the sale, distribution, or delivery of medical marijuana as described in s. 50.85 (1).

139.976 Theft of tax moneys. All marijuana tax moneys received by a permittee for the sale of marijuana or usable marijuana on which the tax under this subchapter has become due and has not been paid are trust funds in the permittee's possession and are the property of this state. Any permittee who fraudulently withholds, appropriates, or otherwise uses marijuana tax moneys that are the property of this state is guilty of theft under s. 943.20 (1), whether or not the permittee has or claims to have an interest in those moneys.

139.977 Seizure and confiscation. (1) All marijuana and usable marijuana produced, processed, made, kept, stored, sold, distributed, or transported in violation of this subchapter, and all tangible personal property used in connection with the marijuana or usable marijuana is unlawful property and subject to seizure by the department or a law enforcement officer. Except as provided in sub. (2), all marijuana and usable marijuana seized under this subsection shall be destroyed.

(2) If marijuana or usable marijuana on which the tax has not been paid is seized as provided under sub. (1), it may be given to law enforcement officers to use in criminal investigations or sold to qualified buyers by the department, without notice. If the department finds that the marijuana or usable marijuana may

deteriorate or become unfit for use in criminal investigations or for sale, or that those uses would otherwise be impractical, the department may order it destroyed.

(3) If marijuana or usable marijuana on which the tax has been paid is seized as provided under sub. (1), it shall be returned to the true owner if ownership can be ascertained and the owner or the owner's agent is not involved in the violation resulting in the seizure. If the ownership cannot 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 may be sold or otherwise disposed of as provided in sub. (2).

(4) If tangible personal property other than marijuana or usable marijuana is seized as provided under sub. (1), the department shall advertise the tangible personal property for sale by publication of a class 2 notice under ch. 985. 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, the department shall sell the property. If a sale is not practical the department may destroy the property. If a person claiming a lien on, or ownership of, the property notifies the department within the time prescribed in this subsection, the department may 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, may be transferred from the property to the sale proceeds. Neither the property seized nor the proceeds from the sale shall 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 under this subchapter 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 as provided under this subsection the property may be ordered destroyed.

139.978 Interest and penalties. (1) Any person who makes or signs any false or fraudulent report under this subchapter or who attempts to evade the tax imposed by s. 139.971, or who aids in or abets the evasion or attempted evasion of that tax, may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any permittee who fails to keep the records required by s. 139.974 (1) and (2) shall be fined not less than $100 nor more than $500 or imprisoned not more than 6 months or both.

(3) Any person who refuses to permit the examination or inspection authorized under s. 139.975 (3) may be fined not more than $500 or imprisoned not more than 6 months or both. The department shall immediately suspend or revoke the permit of any person who refuses to permit the examination or inspection authorized under s. 139.975 (3).

(4) Any person who violates any of the provisions of this subchapter for which no other penalty is prescribed shall be fined not less than $100 nor more than $1,000 or imprisoned not less than 10 days nor more than 90 days or both.

(5) Any person who violates any of the rules promulgated in accordance with this subchapter shall be fined not less than $100 nor more than $500 or imprisoned not more than 6 months or both.

(6) In addition to the penalties imposed for violating the provisions of this subchapter or any of the department's rules, the department shall revoke the permit

of any person convicted of such a violation and not issue another permit to that person for a period of 2 years following the revocation.

(7) Unpaid taxes bear interest at the rate of 12 percent per year from the due date of the return until paid or deposited with the department, and all refunded taxes bear interest at the rate of 3 percent per year from the due date of the return to the date on which the refund is certified on the refund rolls.

(8) All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

(9) Delinquent marijuana taxes bear interest at the rate of 1.5 percent per month until paid. The taxes imposed by this subchapter shall become delinquent if not paid:

(a) In the case of a timely filed return, no return filed or a late return, on or before the due date of the return.

(b) In the case of a deficiency determination of taxes, within 2 months after the date of demand.

(10) If due to neglect an incorrect return is filed, the entire tax finally determined is subject to a penalty of 25 percent of the tax exclusive of interest or other penalty. A person filing an incorrect return has the burden of proving that the error or errors were due to good cause and not due to neglect.

139.979 Personal use. An individual who possesses no more than 6 marijuana plants that have reached the flowering stage at any one time is not subject to the tax imposed under s. 139.971. An individual who possesses more than 6 marijuana plants that have reached the flowering stage at any one time shall apply for the appropriate permit under s. 139.972 and pay the appropriate tax imposed under s. 139.971.

139.980 Agreement with tribes. The department may enter into an agreement with a federally recognized American Indian Tribe in this state for the administration and enforcement of this subchapter and to provide refunds of the tax imposed under s. 139.971 on marijuana sold on tribal land by or to enrolled members of the tribe residing on the tribal land.

SECTION 93. 146.40 (1) (bo) of the statutes is amended to read:

146.40 **(1)** (bo) "Hospice" means a hospice that is licensed under subch. ~~VI~~ VII of ch. 50.

SECTION 94. 146.44 of the statutes is created to read:

146.44 Medical marijuana registry program. (1) DEFINITIONS. In this section:

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

(b) "Debilitating medical condition or treatment" has the meaning given in s. 50.80 (2).

(c) "Medical use of tetrahydrocannabinols" has the meaning given in s. 50.80 (4).

(d) "Out–of–state registry identification card" means a document issued by an entity listed in the rule promulgated under sub. (7) (f) that identifies the person as a qualifying patient or primary caregiver, or an equivalent designation.

(e) "Primary caregiver" has the meaning given in s. 50.80 (5).

(f) "Qualifying patient" has the meaning given in s. 50.80 (6).

(g) "Registrant" means a person to whom a registry identification card is issued under sub. (4).

(h) "Registry identification card" means a document issued by the department under this section that identifies a person as a qualifying patient or primary caregiver.

(i) "Written certification" has the meaning given in s. 50.80 (10).

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

1. His or her name, address, and date of birth.

2. A written certification.

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

4. A registration fee in an amount determined by the department, but not to exceed $150.

(b) An adult registrant who is a qualifying patient or an applicant may jointly apply with another adult to the department for a registry identification card for the other adult, designating the other adult as a primary caregiver for the registrant or applicant. Both persons who jointly apply for a registry identification card under this paragraph shall sign the application form, which shall contain the name, address, and date of birth of the individual applying to be registered as a primary caregiver.

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

(3) PROCESSING THE APPLICATION. The department shall verify the information contained in or accompanying an application submitted under sub. (2) and shall

approve or deny the application within 30 days after receiving it. Except as provided in sub. (2) (c), the department may deny an application submitted under sub. (2) only if the required information has not been provided or if false information has been provided.

(4) ISSUING A REGISTRY IDENTIFICATION CARD. The department shall issue to the applicant a registry identification card within 5 days after approving an application under sub. (3). Unless voided under sub. (5) (b) or (c) or revoked under rules issued by the department under sub. (7) (d), a registry identification card shall expire 4 years from the date of issuance. A registry identification card shall contain all of the following:

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

1. The registrant.

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

3. The qualifying patient if the registrant is a primary caregiver.

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

(c) A photograph of the registrant.

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

(5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult registrant shall notify the department of any change in the registrant's name and address. An adult registrant who is a qualifying patient shall notify the department of any change in his or her physician, of any significant improvement in his or her health as it relates to his or her debilitating medical condition or treatment, and if a registered primary caregiver no longer assists the registrant with the medical use of tetrahydrocannabinols.

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

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

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

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

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

(c) The department may disclose to state or local law enforcement agencies information from an application submitted by, or from a registry identification card issued to, a specific person under this section for the purpose of verifying that the person possesses a valid registry identification card.

(7) RULES. The department shall promulgate rules to implement this section, including the rules required under sub. (2) (c) and rules doing all of the following:

(a) Creating forms for applications to be used under sub. (2).

(b) Specifying how the department will verify the truthfulness of information submitted on an application under sub. (2).

(c) Specifying how and under what circumstances registry identification cards may be renewed.

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

(e) Specifying under what circumstances an applicant whose application is denied may reapply.

(f) Listing each state, district, commonwealth, territory, or insular possession thereof that, by issuing an out–of–state registry identification card, allows the medical use of marijuana by a visiting qualifying patient or allows a person to assist with a visiting qualifying patient's medical use of marijuana.

(g) Creating guidelines for issuing registry identification cards, and for obtaining and distributing marijuana for the medical use of tetrahydrocannabinols, to persons under the care of the department who have a debilitating medical condition or treatment.

(8) PHYSICIAN EDUCATION AND PUBLIC AWARENESS CAMPAIGN. The department shall provide, in a manner determined by the department, information to physicians about the availability of the medical marijuana registry program. The department shall also conduct a public awareness campaign to inform the public about issues relating to medical marijuana, including information about the medical marijuana registry program in this state and information about possible risks and benefits of the medical use of tetrahydrocannabinols.

SECTION 95. 146.46 of the statutes is created to read:

146.46 Medical marijuana logotype. The department shall design an official logotype, appropriate for including on a label affixed to medical marijuana under s. 50.85. The department shall design the logotype to be distinguishable from any logotype for recreational marijuana.

SECTION 96. 146.81 (1) (L) of the statutes is amended to read:

146.81 **(1)** (L) A hospice licensed under subch. ~~VI~~ VII of ch. 50.

SECTION 97. 146.997 (1) (d) 18. of the statutes is amended to read:

146.997 **(1)** (d) 18. A hospice licensed under subch. ~~VI~~ VII of ch. 50.

SECTION 98. 157.06 (11) (hm) of the statutes is created to read:

157.06 **(11)** (hm) Unless otherwise required by federal law, a hospital, physician, procurement organization, or other person may not determine the ultimate recipient of an anatomical gift based solely upon a positive test for the use of marijuana by a potential recipient.

SECTION 99. 157.06 (11) (i) of the statutes is amended to read:

157.06 **(11)** (i) Except as provided under ~~par.~~ pars. (a) 2. and (hm), nothing in this section affects the allocation of organs for transplantation or therapy.

SECTION 100. 289.33 (3) (d) of the statutes is amended to read:

289.33 **(3)** (d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24),

(25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8), and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415, 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III of ch. 91.

SECTION 101. 340.01 (50m) (a) of the statutes is amended to read:

340.01 **(50m)** (a) A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 102. 340.01 (50m) (e) of the statutes is repealed.

SECTION 103. 340.01 (66m) of the statutes is created to read:

340.01 **(66m)** "Tetrahydrocannabinols concentration" means the number of nanograms of tetrahydrocannabinols per milliliter of blood.

SECTION 104. 343.06 (1) (d) of the statutes is amended to read:

343.06 **(1)** (d) To any person whose dependence on alcohol or tetrahydrocannabinols has attained such a degree that it interferes with his or her physical or mental health or social or economic functioning, or who is addicted to the use of controlled substances or controlled substance analogs, except that the secretary may issue a license if the person submits to an examination, evaluation or treatment in a treatment facility meeting the standards prescribed in s. 51.45 (8) (a), as directed by the secretary, in accordance with s. 343.16 (5).

SECTION 105. 343.10 (5) (a) 1. of the statutes is amended to read:

343.10 **(5)** (a) 1. In addition to any restrictions appearing on the former operator's license of the applicant, the occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, hours per week, not to exceed 60, type of occupation and areas or routes of travel which are permitted under the license. The occupational license may permit travel to and from church during specified hours if the travel does not exceed the restrictions as to hours of the day and hours per week in this subdivision. The occupational license may permit travel necessary to comply with a driver safety plan ordered under s. 343.30 (1q) or 343.305 if the travel does not exceed the restrictions as to hours of the day and hours per week in this subdivision. The occupational license may contain restrictions on the use of alcohol, of tetracannabinols, and of controlled substances and controlled substance analogs in violation of s. 961.41.

SECTION 106. 343.10 (5) (a) 2. of the statutes is amended to read:

343.10 **(5)** (a) 2. If the applicant has 2 or more convictions, suspensions or revocations, as counted under s. 343.307 (1), the occupational license shall prohibit the applicant from driving or operating a motor vehicle while he or she has an alcohol concentration of more than 0.0 or a tetrahydrocannabinols concentration of more than 0.0.

SECTION 107. 343.10 (8) (intro.) of the statutes is amended to read:

343.10 **(8)** VIOLATION OF RESTRICTIONS. (intro.) Any person who violates a restriction on an occupational license as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety or use of alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs shall be:

SECTION 108. 343.12 (7) (a) 9. of the statutes is amended to read:

343.12 **(7)** (a) 9. Operating a motor vehicle under the influence of an intoxicant or other drug or with a prohibited alcohol or tetrahydrocannabinols concentration under s. 346.63 (1).

SECTION 109. 343.12 (7) (a) 11. of the statutes is amended to read:

343.12 **(7)** (a) 11. Operating a motor vehicle while under the legal drinking age with a prohibited alcohol concentration under s. 346.63 (2m) or while under the legal age with a prohibited tetrahydrocannabinols concentration under s. 346.63 (2p).

SECTION 110. 343.16 (2) (b) of the statutes is amended to read:

343.16 **(2)** (b) *Specific requirements.* The standards developed by the department under par. (c) shall provide that the examination for persons making their first application for an operator's license shall include, subject to sub. (3) (am), a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning and directing traffic, knowledge of the traffic laws, including ss. 346.072 and 346.26, understanding of fuel–efficient driving habits and the relative costs and availability of other modes of transportation, knowledge of the need for anatomical gifts and the ability to make an anatomical gift through the use of a donor card issued under s. 343.175 (2), and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle. The test of knowledge of the traffic laws shall include questions on the provisions of ss. 343.30 (1q), 343.303 to 343.31 and 346.63 to 346.655, relating to the operation of a motor vehicle and the consumption of alcohol beverages and tetrahydrocannabinols. The test of knowledge may also include questions on the social, medical and economic effects of alcohol and other drug abuse. The examination of applicants for authorization to operate 'Class M' vehicles shall test an applicant's knowledge of

Type 1 motorcycle safety, including proper eye protection to be worn during hours of darkness. The department may require persons changing their residence to this state from another jurisdiction and persons applying for a reinstated license after termination of a revocation period to take all or parts of the examination required of persons making their first application for an operator's license. Any applicant who is required to give an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall furnish a representative vehicle in safe operating condition for use in testing ability.

SECTION 111. 343.16 (5) (a) of the statutes is amended to read:

343.16 **(5)** (a) The secretary may require any applicant for a license or any licensed operator to submit to a special examination by such persons or agencies as the secretary may direct to determine incompetency, physical or mental disability, disease, or any other condition that might prevent such applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle. If the department requires the applicant to submit to an examination, the applicant shall pay for the examination. If the department receives an application for a renewal or duplicate license after voluntary surrender under s. 343.265 or receives a report from a physician, physician assistant, as defined in s. 448.01 (6), advanced practice nurse prescriber certified under s. 441.16 (2), or optometrist under s. 146.82 (3), or if the department has a report of 2 or more arrests within a one–year period for any combination of violations of s. 346.63 (1) or (5) or a local ordinance in conformity with s. 346.63 (1) or (5) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the department shall determine, by interview or otherwise, whether the

operator should submit to an examination under this section. The examination may consist of an assessment. If the examination indicates that education or treatment for a disability, disease, or condition concerning the use of alcohol, a controlled substance or a controlled substance analog, or tetrahydrocannabinols is appropriate, the department may order a driver safety plan in accordance with s. 343.30 (1q). If there is noncompliance with assessment or the driver safety plan, the department shall revoke the person's operating privilege in the manner specified in s. 343.30 (1q) (d).

SECTION 112. 343.30 (1p) of the statutes is amended to read:

343.30 **(1p)** Notwithstanding sub. (1), a court shall suspend the operating privilege of a person for 3 months upon the person's conviction by the court for violation of s. 346.63 (2m) or (2p) or a local ordinance in conformity with s. 346.63 (2m) or (2p). If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2m) or (2p) or a local ordinance in conformity with s. 346.63 (2m) or (2p), the court shall suspend the operating privilege of the person for 6 months.

SECTION 113. 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

343.30 **(1q)** (c) 1. (intro.) Except as provided in subd. 1. a., b., or d., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court shall notify the department of transportation of the assessment order. The court shall notify the person that noncompliance with assessment or the driver safety plan will result in

revocation of the person's operating privilege until the person is in compliance. The assessment order shall:

SECTION 114. 343.30 (1q) (d) 1. of the statutes is amended to read:

343.30 **(1q)** (d) 1. The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs, or attendance at a school under s. 345.60, or both. If the plan requires treatment at an approved tribal treatment facility, as defined in s. 51.01 (2c), the plan may include traditional tribal treatment modes. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year.

SECTION 115. 343.30 (1q) (h) of the statutes is amended to read:

343.30 **(1q)** (h) The court or department shall provide that the period of suspension or revocation imposed under this subsection shall be reduced by any period of suspension or revocation previously served under s. 343.305 if the suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) ~~or~~, (2m), or (2p) or a local ordinance in conformity therewith arise out of the same incident or occurrence. The court or department shall order that the period of suspension or revocation imposed under this subsection run concurrently with any period of time remaining on a suspension or revocation imposed under s. 343.305

arising out of the same incident or occurrence. The court may modify an occupational license authorized under s. 343.305 (8) (d) in accordance with this subsection.

SECTION 116. 343.305 (2) of the statutes is amended to read:

343.305 **(2)** IMPLIED CONSENT. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (ar) or (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a), (am), or (ar), and may designate which of the tests shall be administered first.

SECTION 117. 343.305 (3) (a) of the statutes is amended to read:

343.305 **(3)** (a) Upon arrest of a person for violation of s. 346.63 (1), (2m), (2p), or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest subsequent to a refusal under par. (ar), a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

SECTION 118. 343.305 (3) (am) of the statutes is amended to read:

343.305 **(3)** (am) Prior to arrest, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2) whenever a law enforcement officer detects any presence of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person is violating or has violated s. 346.63 (7). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. For the purposes of this paragraph, "law enforcement officer" includes inspectors in the performance of duties under s. 110.07 (3).

SECTION 119. 343.305 (3) (ar) 1. of the statutes is amended to read:

343.305 **(3)** (ar) 1. If a person is the operator of a vehicle that is involved in an accident that causes substantial bodily harm, as defined in s. 939.22 (38), to any person, and a law enforcement officer detects any presence of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subdivision and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this subdivision, he or she may be arrested under par. (a).

SECTION 120. 343.305 (3) (b) of the statutes is amended to read:

343.305 **(3)** (b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 (1), (2m), (2p), or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects any presence of alcohol, tetrahydrocannabinols, controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or more samples specified in par. (a) or (am) may be administered to the person.

SECTION 121. 343.305 (5) (b) of the statutes is amended to read:

343.305 **(5)** (b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (2p), (5), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), (2p), or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog, or any other drug, or any combination of alcohol, controlled substance, controlled substance analog, and any other drug in the blood only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician.

SECTION 122. 343.305 (5) (d) of the statutes is amended to read:

343.305 **(5)** (d) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant, a controlled substance, a

controlled substance analog or any other drug, or under the influence of any combination of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog and any other drug, to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having a prohibited alcohol or tetrahydrocannabinols concentration, or alleged to have been driving or operating or on duty time with respect to a commercial motor vehicle while having an alcohol concentration above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content, or of having an alcohol concentration of 0.04 or more, the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant, a controlled substance, a controlled substance analog or any other drug, or under the influence of any combination of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog and any other drug, to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or any issue relating to the person's alcohol concentration. Test results shall be given the effect required under s. 885.235.

SECTION 123. 343.305 (5) (dm) of the statutes is created to read:

343.305 **(5)** (dm) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while having a tetrahydrocannabinols concentration at or above specified levels, the results of a blood test administered in accordance with this

section are admissible on any issue relating to the tetrahydrocannabinols concentration. Test results shall be given the effect required under s. 885.235.

SECTION 124. 343.305 (6) (a) of the statutes is amended to read:

343.305 **(6)** (a) Chemical analyses of blood or urine to be considered valid under this section shall have been performed substantially according to methods approved by the laboratory of hygiene and by an individual possessing a valid permit to perform the analyses issued by the department of health services. The department of health services shall approve laboratories for the purpose of performing chemical analyses of blood or urine for alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs and shall develop and administer a program for regular monitoring of the laboratories. A list of approved laboratories shall be provided to all law enforcement agencies in the state. Urine specimens are to be collected by methods specified by the laboratory of hygiene. The laboratory of hygiene shall furnish an ample supply of urine and blood specimen containers to permit all law enforcement officers to comply with the requirements of this section.

SECTION 125. 343.305 (7) (a) of the statutes is amended to read:

343.305 **(7)** (a) If a person submits to chemical testing administered in accordance with this section and any test results indicate the presence of a detectable amount of a restricted controlled substance in the person's blood or a prohibited alcohol or tetrahydrocannabinols concentration, the law enforcement officer shall report the results to the department. The person's operating privilege is administratively suspended for 6 months.

SECTION 126. 343.305 (8) (b) 2. bm. of the statutes is amended to read:

343.305 **(8)** (b) 2. bm. Whether the person had a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

SECTION 127. 343.305 (8) (b) 2. d. of the statutes is amended to read:

343.305 **(8)** (b) 2. d. If one or more tests were administered in accordance with this section, whether each of the test results for those tests indicate the person had a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood.

SECTION 128. 343.305 (8) (b) 4m. a. of the statutes is amended to read:

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

SECTION 129. 343.305 (8) (b) 5. b. of the statutes is amended to read:

343.305 **(8)** (b) 5. b. The person did not have a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

SECTION 130. 343.305 (8) (b) 6. b. of the statutes is amended to read:

343.305 **(8)** (b) 6. b. The person had a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

SECTION 131. 343.305 (9) (a) 5. a. of the statutes is amended to read:

343.305 **(9)** (a) 5. a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol,

tetrahydrocannabinols, a controlled substance or a controlled substance analog or any combination of alcohol, tetrahydrocannabinols, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving, having a restricted controlled substance in his or her blood, or having a prohibited alcohol or tetrahydrocannabinols concentration or, if the person was driving or operating a commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

SECTION 132. 343.305 (9) (a) 5. c. of the statutes is amended to read:

343.305 **(9)** (a) 5. c. Whether the person refused to permit the test. The person shall not be considered to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs or other drugs.

SECTION 133. 343.305 (9) (am) 5. a. of the statutes is amended to read:

343.305 **(9)** (am) 5. a. Whether the officer detected any presence of alcohol, tetrahydrocannabinols, controlled substance, controlled substance analog or other drug, or a combination thereof, on the person or had reason to believe that the person was violating or had violated s. 346.63 (7).

SECTION 134. 343.305 (9) (am) 5. c. of the statutes is amended to read:

343.305 **(9)** (am) 5. c. Whether the person refused to permit the test. The person shall not be considered to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs or other drugs.

SECTION 135. 343.305 (9) (d) of the statutes is amended to read:

343.305 **(9)** (d) At the close of the hearing, or within 5 days thereafter, the court shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined adversely to the person, the court shall proceed under sub. (10). If one or more of the issues is determined favorably to the person, the court shall order that no action be taken on the operating privilege on account of the person's refusal to take the test in question. This section does not preclude the prosecution of the person for violation of s. 346.63 (1), (2m), (2p), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

SECTION 136. 343.305 (10) (c) 1. (intro.) of the statutes is amended to read:

343.305 **(10)** (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court shall notify the person and the department of transportation of the assessment order. The court shall also notify the person that noncompliance with assessment or the driver safety plan will result in license suspension until the person is in compliance. The assessment order shall:

SECTION 137. 343.305 (10) (d) of the statutes is amended to read:

343.305 **(10)** (d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs, attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the department is notified of noncompliance, other than for nonpayment of the assessment fee or driver safety plan fee, it shall revoke the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person's operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs

first. The department shall notify the person of the suspension or revocation, the reason for the suspension or revocation and the person's right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10–day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

SECTION 138. 343.305 (10) (em) of the statutes is amended to read:

343.305 **(10)** (em) One penalty for improperly refusing to submit to a test for intoxication regarding a person arrested for a violation of s. 346.63 (2m), (2p), or (7) or a local ordinance in conformity therewith is revocation of the person's operating privilege for 6 months. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the revocation period is 12 months. After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10. Any such improper refusal or revocation for the refusal does not count as a prior refusal or a prior

revocation under this section or ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be required to submit to and comply with any assessment or driver safety plan under pars. (c) and (d).

SECTION 139. 343.307 (1) (d) of the statutes is amended to read:

343.307 **(1)** (d) Convictions under the law of another jurisdiction that prohibits a person from refusing chemical testing or using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol <u>or tetrahydrocannabinols</u> concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 140. 343.307 (2) (e) of the statutes is amended to read:

343.307 **(2)** (e) Convictions under the law of another jurisdiction that prohibits a person from refusing chemical testing or using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol <u>or tetrahydrocannabinols</u> concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 141. 343.31 (1) (am) of the statutes is amended to read:

343.31 **(1)** (am) Injury by the operation of a vehicle while under the influence of an intoxicant, <u>tetrahydrocannabinols,</u> a controlled substance or a controlled substance analog, or any combination of an intoxicant, <u>tetrahydrocannabinols,</u> a

controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or while the person has a detectable amount of a restricted controlled substance in his or her blood or has a prohibited alcohol <u>or tetrahydrocannabinols</u> concentration and which is criminal under s. 346.63 (2).

SECTION 142. 343.31 (2) of the statutes is amended to read:

343.31 **(2)** The department shall revoke the operating privilege of any resident upon receiving notice of the conviction of such person in another jurisdiction for an offense therein which, if committed in this state, would have been cause for revocation under this section or for revocation under s. 343.30 (1q). Such offenses shall include violation of any law of another jurisdiction that prohibits a person from using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol <u>or tetrahydrocannabinols</u> concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws. Upon receiving similar notice with respect to a nonresident, the department shall revoke the privilege of the nonresident to operate a motor vehicle in this state. Such revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state.

SECTION 143. 343.315 (2) (a) 2. of the statutes is amended to read:

343.315 **(2)** (a) 2. Section 346.63 (1) (b) or (5) (a) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or

band in this state in conformity with s. 346.63 (1) (b) or (5) (a) or the law of another jurisdiction prohibiting driving or operating a commercial motor vehicle while the person's alcohol concentration is 0.04 or more or with an excess or specified range of alcohol or tetrahydrocannabinols concentration, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 144. 343.315 (2) (a) 5. of the statutes is amended to read:

343.315 **(2)** (a) 5. Section 343.305 (7) or (9) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (7) or (9) or the law of another jurisdiction prohibiting refusal of a person driving or operating a motor vehicle to submit to chemical testing to determine the person's alcohol or tetrahydrocannabinols concentration or intoxication or the amount of a restricted controlled substance in the person's blood, or prohibiting positive results from such chemical testing, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 145. 343.315 (2) (a) 6. of the statutes is amended to read:

343.315 **(2)** (a) 6. Section 346.63 (2) or (6), 940.09 (1) or 940.25 or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction prohibiting causing or inflicting injury, great bodily harm or death through use of a motor vehicle while intoxicated or under the influence of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog or a combination thereof, or with an alcohol concentration of 0.04 or more or with an excess or specified range of alcohol or tetrahydrocannabinols concentration, while under the influence of any drug to a degree that renders the person incapable of safely driving, or while having a

detectable amount of a restricted controlled substance in the person's blood, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 146. 343.315 (2) (bm) 2. of the statutes is amended to read:

343.315 **(2)** (bm) 2. The offense relates to a vehicle operator's alcohol <u>or tetrahydrocannabinols</u> concentration or intoxication or the amount of a restricted controlled substance in the operator's blood.

SECTION 147. 343.32 (2) (bj) of the statutes is amended to read:

343.32 **(2)** (bj) The scale adopted by the secretary shall assess, for each conviction, 6 demerit points for a violation of s. 346.63 (6), 4 demerit points for a violation of s. 346.63 (2m) <u>or (2p)</u>, and 3 demerit points for a violation of s. 346.63 (7) (a) 3. The scale adopted by the secretary shall not assess any demerit points for conviction of a violation of s. 346.63 (5) or (7) (a) 1. or 2.

SECTION 148. 343.38 (1) (d) 2. of the statutes is amended to read:

343.38 **(1)** (d) 2. Not more than 45 days before applying for reinstatement, the person submits to and complies with an assessment by an approved public treatment facility, as defined in s. 51.45 (2) (c), for examination of the person's use of alcohol, <u>tetrahydrocannabinols,</u> controlled substances, or controlled substance analogs and development of a driver safety plan for the person.

SECTION 149. 343.44 (1) (a) of the statutes is amended to read:

343.44 **(1)** (a) *Operating while suspended.* No person whose operating privilege has been duly suspended under the laws of this state may operate a motor vehicle upon any highway in this state during the period of suspension or in violation of any restriction on an occupational license issued to the person during the period of suspension. A person's knowledge that his or her operating privilege is suspended is not an element of the offense under this paragraph. In this paragraph, "restriction

on an occupational license" means restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety or use of alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs.

SECTION 150. 343.44 (1) (b) of the statutes is amended to read:

343.44 **(1)** (b) *Operating while revoked.* No person whose operating privilege has been duly revoked under the laws of this state may operate a motor vehicle upon any highway in this state during the period of revocation or in violation of any restriction on an occupational license issued to the person during the period of revocation. A person's knowledge that his or her operating privilege is revoked is not an element of the offense under this paragraph. In this paragraph, "restriction on an occupational license" means restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety or use of alcohol, tetrahydrocannabinols, controlled substances or controlled substance analogs.

SECTION 151. 344.576 (2) (b) of the statutes is amended to read:

344.576 **(2)** (b) The damage occurs while the renter or authorized driver operates the private passenger vehicle in this state while under the influence of an intoxicant or other drug, as described under s. 346.63 (1) (a), (am), or (b) ~~or~~, (2m), or (2p).

SECTION 152. 346.63 (1) (b) of the statutes is amended to read:

346.63 **(1)** (b) The person has a prohibited alcohol or tetrahydrocannabinols concentration.

SECTION 153. 346.63 (1) (d) of the statutes is renumbered 346.63 (1) (d) 1. and amended to read:

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

SECTION 154. 346.63 (1) (d) 2. of the statutes is created to read:

346.63 **(1)** (d) 2. In an action under par. (b) that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 155. 346.63 (2) (a) 2. of the statutes is amended to read:

346.63 **(2)** (a) 2. The person has a prohibited alcohol or tetrahydrocannabinols concentration.

SECTION 156. 346.63 (2) (b) 1. of the statutes is amended to read:

346.63 **(2)** (b) 1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, tetrahydrocannabinols, a controlled substance, a controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, did not have a prohibited alcohol or

tetrahydrocannabinols concentration described under par. (a) 2., or did not have a detectable amount of a restricted controlled substance in his or her blood.

SECTION 157. 346.63 (2) (b) 2. of the statutes is amended to read:

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

SECTION 158. 346.63 (2) (b) 3. of the statutes is created to read:

346.63 **(2)** (b) 3. In an action under par. (a) 2. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 159. 346.63 (2p) of the statutes is created to read:

346.63 **(2p)** If a person has not attained the legal age, as defined in s. 961.70 (2), the person may not drive or operate a motor vehicle while he or she has a tetrahydrocannabinols concentration of more than 0.0 but not more than 5.0. One penalty for violation of this subsection is suspension of a person's operating privilege under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10 at any time. If a person arrested for a violation of this subsection refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (10) (em).

SECTION 160. 346.637 of the statutes is amended to read:

346.637 Driver awareness program. The department shall conduct a campaign to educate drivers in this state concerning:

(1) The laws relating to operating a motor vehicle and drinking alcohol, using tetrahydrocannabinols, controlled substances, or controlled substance analogs, or using any combination of alcohol, tetrahydrocannabinols, controlled substances, and controlled substance analogs.

(2) The effects of alcohol, tetrahydrocannabinols, controlled substances, or controlled substance analogs, or the use of them in any combination, on a person's ability to operate a motor vehicle.

SECTION 161. 346.65 (2m) (a) of the statutes is amended to read:

346.65 **(2m)** (a) In imposing a sentence under sub. (2) for a violation of s. 346.63 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall review the record and consider the aggravating and mitigating factors in the matter. If the amount of alcohol in the person's blood or urine or the amount of a restricted controlled substance or tetrahydrocannabinols in the person's blood is known, the court shall consider that amount as a factor in sentencing. The chief judge of each judicial administrative district shall adopt guidelines, under the chief judge's authority to adopt local rules under SCR 70.34, for the consideration of aggravating and mitigating factors.

SECTION 162. 346.65 (2q) of the statutes is amended to read:

346.65 **(2q)** Any person violating s. 346.63 (2m) or (2p) shall forfeit $200. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2m) or (2p), the person shall be fined $400.

SECTION 163. 346.93 (1) of the statutes is amended to read:

346.93 **(1)** No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport, or have under his or her control any alcohol beverage or tetrahydrocannabinols in any motor vehicle ~~unless the~~. This subsection does not prohibit a person who is employed by a brewer, brewpub, alcohol beverage licensee, wholesaler, retailer, distributor, manufacturer, or rectifier ~~and is~~ from possessing, transporting, or having ~~such beverage~~ alcohol beverages in a motor vehicle under his or her control during his or her working hours and in the course of employment, as provided under s. 125.07 (4) (bm).

SECTION 164. 346.935 (1) of the statutes is amended to read:

346.935 **(1)** No person may drink alcohol beverages; burn, inhale, or ingest products containing tetrahydrocannabinol; or inhale nitrous oxide while he or she is in any motor vehicle when the vehicle is upon a highway.

SECTION 165. 346.935 (2) of the statutes is amended to read:

346.935 **(2)** No person may possess on his or her person, in a privately owned motor vehicle upon a public highway, any bottle or receptacle containing alcohol beverages, tetrahydrocannabinols, or nitrous oxide if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed or released.

SECTION 166. 346.935 (3) of the statutes is amended to read:

346.935 **(3)** The owner of a privately owned motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept in the motor vehicle when it is upon a highway any bottle or receptacle containing alcohol beverages, tetrahydrocannabinols, or nitrous oxide if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle

have been partially removed or released. This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. A utility compartment or glove compartment is considered to be within the area normally occupied by the driver and passengers.

SECTION 167. 349.02 (2) (b) 4. of the statutes is amended to read:

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

SECTION 168. 349.03 (2m) of the statutes is amended to read:

349.03 **(2m)** Notwithstanding sub. (2), a municipal court may suspend a license for a violation of a local ordinance in conformity with s. 346.63 (1) ~~or~~, (2m), or (2p).

SECTION 169. 349.06 (1m) of the statutes is amended to read:

349.06 **(1m)** Notwithstanding sub. (1), a municipal court may suspend a license for a violation of a local ordinance in conformity with s. 346.63 (1) ~~or~~, (2m), or (2p).

SECTION 170. 350.01 (10v) (a) of the statutes is amended to read:

350.01 **(10v)** (a) A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 171. 350.01 (10v) (e) of the statutes is repealed.

SECTION 172. 350.01 (21g) of the statutes is created to read:

350.01 **(21g)** "Tetrahydrocannabinols concentration" has the meaning given in s. 23.33 (1) (k).

SECTION 173. 350.101 (1) (bg) of the statutes is created to read:

350.101 **(1)** (bg) *Operating with tetrahydrocannabinols concentration at or above specified levels.* No person may engage in the operation of a snowmobile while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 174. 350.101 (1) (cg) of the statutes is created to read:

350.101 **(1)** (cg) *Operating with tetrahydrocannabinols concentration at or above specified levels; below age 21.* If a person has not attained the age of 21, the person may not engage in the operation of a snowmobile while he or she has a tetrahydrocannabinols concentration of more than 0.0 but not more than 5.0.

SECTION 175. 350.101 (1) (d) of the statutes is amended to read:

350.101 **(1)** (d) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (b), (bg), or (bm) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (b), (bg), or (bm), the offenses shall be joined. If the person is found guilty of any combination of par. (a), (b), (bg), or (bm) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 350.11 (3) (a) 2. and 3. Paragraphs (a), (b), (bg), and (bm) each require proof of a fact for conviction which the others do not require.

SECTION 176. 350.101 (1) (e) of the statutes is renumbered 350.101 (1) (e) 1. and amended to read:

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

SECTION 177. 350.101 (1) (e) 2. of the statutes is created to read:

350.101 **(1)** (e) 2. In an action under par. (bg) or (cg) that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 178. 350.101 (2) (bg) of the statutes is created to read:

350.101 **(2)** (bg) *Causing injury with tetrahydrocannabinols concentrations at or above specified levels.* No person who has a tetrahydrocannabinols concentration of 5.0 or more may cause injury to another person by the operation of a snowmobile.

SECTION 179. 350.101 (2) (c) of the statutes is amended to read:

350.101 **(2)** (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (b), (bg), or (bm) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (b), (bg), or (bm) in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a), (b), (bg), or (bm) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 350.11 (3) (a) 2. and 3. Paragraphs (a), (b), (bg), and (bm) each require proof of a fact for conviction which the others do not require.

SECTION 180. 350.101 (2) (d) 1. of the statutes is amended to read:

350.101 **(2)** (d) 1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration

of 0.08 or more, a tetrahydrocannabinols concentration of 5.0 or more, or a detectable amount of a restricted controlled substance in his or her blood.

SECTION 181. 350.101 (2) (d) 2. of the statutes is amended to read:

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

SECTION 182. 350.101 (2) (d) 3. of the statutes is created to read:

350.101 **(2)** (d) 3. In an action under par. (bg) that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 183. 350.104 (4) of the statutes is amended to read:

350.104 **(4)** ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated snowmobiling law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol or tetrahydrocannabinols concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235.

This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

SECTION 184. 350.11 (3) (a) 1. of the statutes is amended to read:

350.11 **(3)** (a) 1. Except as provided under subds. 2. and 3., a person who violates s. 350.101 (1) (a), (b), (bg), or (bm) or s. 350.104 (5) shall forfeit not less than $400 nor more than $550.

SECTION 185. 350.11 (3) (a) 2. of the statutes is amended to read:

350.11 **(3)** (a) 2. Except as provided under subd. 3., a person who violates s. 350.101 (1) (a), (b), (bg), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated snowmobiling law or the refusal law shall be fined not less than $300 nor more than $1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

SECTION 186. 350.11 (3) (a) 3. of the statutes is amended to read:

350.11 **(3)** (a) 3. A person who violates s. 350.101 (1) (a), (b), (bg), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated snowmobiling law or refusal law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

SECTION 187. 350.11 (3) (a) 4. of the statutes is amended to read:

350.11 **(3)** (a) 4. A person who violates s. 350.101 (1) (c) or (cg) or 350.104 (5) and who has not attained the age of 19 shall forfeit not more than $50.

SECTION 188. 350.11 (3) (d) of the statutes is amended to read:

350.11 **(3)** (d) *Alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols; assessment.* In addition to any other penalty or order, a person who violates s. 350.101 (1) or (2) or 350.104 (5) or who violates s. 940.09 or

940.25 if the violation involves the operation of a snowmobile, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

SECTION 189. 609.83 of the statutes is amended to read:

609.83 Coverage of drugs and devices. Limited service health organizations, preferred provider plans, and defined network plans are subject to ss. 632.853 and 632.895 (16p) and (16t).

SECTION 190. 632.895 (16p) of the statutes is created to read:

632.895 **(16p)** MEDICAL USE OF MARIJUANA. (a) In this subsection, "medical use of tetrahydrocannabinols" has the meaning given in s. 50.80 (4).

(b) Every disability insurance policy and every self–insured health plan of the state or of a county, city, town, village, or school district that provides coverage of prescription drugs and devices shall provide coverage for the medical use of tetrahydrocannabinols in accordance with subch. VI of ch. 50 and any equipment or supplies necessary for the medical use of tetrahydrocannabinols.

(c) Coverage under par. (b) may be subject only to the exclusions, limitations, and cost–sharing provisions that apply generally to the coverage of prescription drugs or devices that is provided under the policy or self–insured health plan.

SECTION 191. 767.41 (5) (am) (intro.) of the statutes is amended to read:

767.41 **(5)** (am) (intro.) Subject to pars. (bm) ~~and~~, (c), and (d), in determining legal custody and periods of physical placement, the court shall consider all facts

relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to pars. (bm) ~~and~~, (c), and (d), the court shall consider the following factors in making its determination:

SECTION 192. 767.41 (5) (d) of the statutes is created to read:

767.41 **(5)** (d) The court may not consider as a factor in determining the legal custody of a child whether a parent or potential custodian holds or has applied for a registry identification card, as defined in s. 146.44 (1) (h), is or has been the subject of a written certification, as defined in s. 50.80 (10), or is or has been a qualifying patient, as defined in s. 50.80 (6), or a primary caregiver, as defined in s. 50.80 (5), unless the parent or potential custodian's behavior creates an unreasonable danger to the child that can be clearly articulated and substantiated.

SECTION 193. 767.451 (5m) (a) of the statutes is amended to read:

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

SECTION 194. 767.451 (5m) (d) of the statutes is created to read:

767.451 **(5m)** (d) In an action to modify a legal custody order, the court may not consider as a factor in making a determination whether a parent or potential custodian holds or has applied for a registry identification card, as defined in s. 146.44 (1) (h), is or has been the subject of a written certification, as defined in s. 50.80 (10), or is or has been a qualifying patient, as defined in s. 50.80 (6), or a primary caregiver, as defined in s. 50.80 (5), unless the parent or potential

custodian's behavior creates an unreasonable danger to the child that can be clearly articulated and substantiated.

SECTION 195. 885.235 (1) (d) 1. of the statutes is amended to read:

885.235 **(1)** (d) 1. A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 196. 885.235 (1) (d) 5. of the statutes is repealed.

SECTION 197. 885.235 (1) (e) of the statutes is created to read:

885.235 **(1)** (e) "Tetrahydrocannabinols concentration" has the meaning given in s. 23.33 (1) (k).

SECTION 198. 885.235 (1g) (intro.) of the statutes is amended to read:

885.235 **(1g)** (intro.) In any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant or had a prohibited alcohol <u>or tetrahydrocannabinols</u> concentration or a specified alcohol concentration while operating or driving a motor vehicle or, if the vehicle is a commercial motor vehicle, on duty time, while operating a motorboat, except a sailboat operating under sail alone, while operating a snowmobile, while operating an all–terrain vehicle or utility terrain vehicle or while handling a firearm, evidence of the amount of alcohol <u>or tetrahydrocannabinols</u> in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she was under the influence of an intoxicant or had a prohibited alcohol <u>or tetrahydrocannabinols</u> concentration or a specified alcohol concentration if the sample was taken within 3 hours after the event to be proved. The chemical analysis shall be given effect as follows without requiring any expert testimony as to its effect:

SECTION 199. 885.235 (1g) (ag) of the statutes is created to read:

885.235 **(1g)** (ag) The fact that the analysis shows that the person had a tetrahydrocannabinols concentration of more than 0.0 but less than 5.0 is relevant evidence on the issue of being under the combined influence of tetrahydrocannabinols and alcohol, a controlled substance, a controlled substance analog, or any other drug, but, except as provided in sub. (1L), is not to be given any prima facie effect.

SECTION 200. 885.235 (1g) (cg) of the statutes is created to read:

885.235 **(1g)** (cg) The fact that the analysis shows that the person had a tetrahydrocannabinols concentration of 5.0 or more is prima facie evidence that he or she had a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 201. 885.235 (1L) of the statutes is created to read:

885.235 **(1L)** In any action under s. 23.33 (4c) (a) 3g., 30.681 (1) (bn) 2., 346.63 (2p), or 350.101 (1) (cg), evidence of the amount of tetrahydrocannabinols in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine, is admissible on the issue of whether he or she had a tetrahydrocannabinols concentration in the range specified in s. 23.33 (4c) (a) 3g., 30.681 (1) (bn) 2., 346.63 (2p), or 350.101 (1) (cg) if the sample was taken within 3 hours after the event to be proved. The fact that the analysis shows that the person had a tetrahydrocannabinols concentration of more than 0.0 but not more than 5.0 is prima facie evidence that the person had a tetrahydrocannabinols concentration in the range specified in s. 23.33 (4c) (a) 3g., 30.681 (1) (bn) 2., 346.63 (2p), or 350.101 (1) (cg).

SECTION 202. 885.235 (1m) of the statutes is amended to read:

885.235 **(1m)** In any action under s. 23.33 (4c) (a) 3., 23.335 (12) (a) 3., 30.681 (1) (bn), 346.63 (2m) or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the

person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she had an alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 23.335 (12) (a) 3., 30.681 (1) (bn) 1., 346.63 (2m), or 350.101 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours after the event to be proved. The fact that the analysis shows that the person had an alcohol concentration of more than 0.0 but not more than 0.08 is prima facie evidence that the person had an alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 23.335 (12) (a) 3., 30.681 (1) (bn) 1., 346.63 (2m), or 350.101 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7).

SECTION 203. 885.235 (4) of the statutes is amended to read:

885.235 **(4)** The provisions of this section relating to the admissibility of chemical tests for alcohol or tetrahydrocannabinols concentration or intoxication or for determining whether a person had a detectable amount of a restricted controlled substance in his or her blood shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant, had a detectable amount of a restricted controlled substance in his or her blood, had a specified alcohol or tetrahydrocannabinols concentration, or had an alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 23.335 (12) (a) 3., 30.681 (1) (bn) 1., 346.63 (2m), or 350.101 (1) (c), or had a tetrahydrocannabinols concentration in the range specified in s. 23.33 (4c) (a) 3g., 30.681 (1) (bn) 2., 346.63 (2p), or 350.101 (1) (cg).

SECTION 204. 895.047 (3) (a) of the statutes is amended to read:

895.047 **(3)** (a) If the defendant proves by clear and convincing evidence that at the time of the injury the claimant was under the influence of any controlled

substance or controlled substance analog to the extent prohibited under s. 346.63 (1) (a), or had an alcohol concentration, as defined in s. 340.01 (1v), of 0.08 or more or a tetrahydrocannabinols concentration, as defined in s. 23.33 (1) (k), of 5.0 or more, there shall be a rebuttable presumption that the claimant's intoxication or drug use was the cause of his or her injury.

SECTION 205. 905.04 (4) (f) of the statutes is amended to read:

905.04 **(4)** (f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or for alcohol concentration, as defined in s. 340.01 (1v), or tetrahydrocannabinols concentration, as defined in s. 23.33 (1) (k).

SECTION 206. 939.22 (33) (a) of the statutes is amended to read:

939.22 **(33)** (a) A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 207. 939.22 (33) (e) of the statutes is repealed.

SECTION 208. 939.22 (39g) of the statutes is created to read:

939.22 **(39g)** "Tetrahydrocannabinols concentration" has the meaning given in s. 23.33 (1) (k).

SECTION 209. 940.09 (1) (bg) of the statutes is created to read:

940.09 **(1)** (bg) Causes the death of another by the operation or handling of a vehicle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 210. 940.09 (1) (dg) of the statutes is created to read:

940.09 **(1)** (dg) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 211. 940.09 (1g) (bg) of the statutes is created to read:

940.09 **(1g)** (bg) Causes the death of another by the operation or handling of a firearm or airgun while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 212. 940.09 (1g) (dg) of the statutes is created to read:

940.09 **(1g)** (dg) Causes the death of an unborn child by the operation or handling of a firearm or airgun while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 213. 940.09 (1m) (a) of the statutes is amended to read:

940.09 **(1m)** (a) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of any combination of sub. (1) (a), (am), ~~or~~ (b)<u>, or (bg)</u>; any combination of sub. (1) (a), (am), <u>(bg),</u> or (bm); any combination of sub. (1) (c), (cm), ~~or~~ (d)<u>, or (dg)</u>; any combination of sub. (1) (c), (cm), <u>(dg),</u> or (e); any combination of sub. (1g) (a), (am), ~~or~~ (b)<u>, or (bg)</u>; or any combination of sub. (1g) (c), (cm), ~~or~~ (d)<u>, or (dg)</u> for acts arising out of the same incident or occurrence.

SECTION 214. 940.09 (1m) (b) of the statutes is amended to read:

940.09 **(1m)** (b) If a person is charged in an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of more than one of the crimes so charged for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 23.335 (23) (c) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), <u>(bg),</u> (bm), (c), (cm), (d), <u>(dg),</u> and (e) each require proof of a fact for conviction which the others do not require, and sub. (1g) (a), (am), (b), <u>(bg),</u> (c), (cm), ~~and~~ (d)<u>, and (dg)</u> each require proof of a fact for conviction which the others do not require.

SECTION 215. 940.09 (2) (a) of the statutes is amended to read:

940.09 **(2)** (a) In any action under this section, the defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have a detectable amount of a restricted controlled substance in his or her blood, did not have a tetrahydrocannabinols concentration of 5.0 or greater, or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e) or (1g) (b) or (d).

SECTION 216. 940.09 (2) (b) of the statutes is amended to read:

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

SECTION 217. 940.09 (2) (c) of the statutes is created to read:

940.09 **(2)** (c) In an action under sub. (1) (bg) or (dg) or (1g) (bg) or (dg) that is based on the defendant allegedly having a tetrahydrocannabinols concentration that is 5.0 or greater, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 218. 940.25 (1) (bg) of the statutes is created to read:

940.25 **(1)** (bg) Causes great bodily harm to another human being by the operation of a vehicle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 219. 940.25 (1) (dg) of the statutes is created to read:

940.25 **(1)** (dg) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 220. 940.25 (1m) of the statutes is amended to read:

940.25 **(1m)** (a) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of any combination of sub. (1) (a), (am), ~~or~~ (b)<u>, or (bg)</u>; any combination of sub. (1) (a), (am), <u>(bg),</u> or (bm); any combination of sub. (1) (c), (cm), ~~or~~ (d)<u>, or (dg)</u>; or any combination of sub. (1) (c), (cm), <u>(dg),</u> or (e) for acts arising out of the same incident or occurrence.

(b) If a person is charged in an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of more than one of the crimes so charged for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 23.335 (23) (c) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), <u>(bg),</u> (bm), (c), (cm), (d), <u>(dg),</u> and (e) each require proof of a fact for conviction which the others do not require.

SECTION 221. 940.25 (2) (a) of the statutes is amended to read:

940.25 **(2)** (a) The defendant has a defense if he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even

if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have a detectable amount of a restricted controlled substance in his or her blood, did not have a tetrahydrocannabinols concentration of 5.0 or greater, or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e).

SECTION 222. 940.25 (2) (b) of the statutes is amended to read:

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

SECTION 223. 940.25 (2) (c) of the statutes is created to read:

940.25 **(2)** (c) In any action under this section that is based on the defendant allegedly having a tetrahydrocannabinols concentration that is 5.0 or greater, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 224. 941.20 (1) (bg) of the statutes is created to read:

941.20 **(1)** (bg) Operates or goes armed with a firearm while he or she has a tetrahydrocannabinols concentration that is 5.0 or greater. A defendant has a defense to any action under this paragraph if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid

prescription for tetrahydrocannabinol or he or she was a qualifying patient, as defined in s. 50.80 (6).

SECTION 225. 941.20 (1) (bm) of the statutes is amended to read:

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

SECTION 226. 961.01 (14) of the statutes is renumbered 961.70 (3) and amended to read:

961.70 **(3)** "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not, with a tetrahydrocannabinols concentration that is greater than 0.3 percent 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~~, including tetrahydrocannabinols~~. "Marijuana" does include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

SECTION 227. 961.11 (4g) of the statutes is repealed.

SECTION 228. 961.14 (4) (t) of the statutes is repealed.

SECTION 229. 961.32 (2m) of the statutes is repealed.

SECTION 230. 961.34 of the statutes is renumbered 961.75, and 961.75 (title), as renumbered, is amended to read:

961.75 (title) ~~**Controlled substances**~~ **Marijuana therapeutic research.**

SECTION 231. 961.38 (1n) of the statutes is repealed.

SECTION 232. 961.41 (1) (h) of the statutes is repealed.

SECTION 233. 961.41 (1m) (h) of the statutes is repealed.

SECTION 234. 961.41 (1q) of the statutes is repealed.

SECTION 235. 961.41 (1r) of the statutes is amended to read:

961.41 **(1r)** DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, ~~tetrahydrocannabinols,~~ synthetic cannabinoids, or substituted cathinones, or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. ~~In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.~~

SECTION 236. 961.41 (3g) (c) of the statutes is amended to read:

961.41 **(3g)** (c) *Cocaine and cocaine base.* If a person possesses or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class

I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, ~~marijuana,~~ or depressant, stimulant, or hallucinogenic drugs.

SECTION 237. 961.41 (3g) (d) of the statutes is amended to read:

961.41 **(3g)** (d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, 3,4–methylenedioxymethamphetamine, methcathinone, cathinone, N–benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L), psilocin, or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, 3,4–methylenedioxymethamphetamine, methcathinone, cathinone, N–benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L), psilocin, or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, ~~marijuana,~~ or depressant, stimulant, or hallucinogenic drugs.

SECTION 238. 961.41 (3g) (e) of the statutes is repealed.

SECTION 239. 961.41 (3g) (em) of the statutes is amended to read:

961.41 **(3g)** (em) *Synthetic cannabinoids.* If a person possesses or attempts to possess a controlled substance specified in s. 961.14 (4) (tb), or a controlled substance analog of a controlled substance specified in s. 961.14 (4) (tb), the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, ~~marijuana,~~ or depressant, stimulant, or hallucinogenic drugs.

SECTION 240. 961.47 (1) of the statutes is amended to read:

961.47 **(1)** Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, ~~marijuana~~ or stimulant, depressant~~,~~ or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be

without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

SECTION 241. 961.48 (3) of the statutes is amended to read:

961.48 **(3)** For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs, narcotic drugs, ~~marijuana~~ or depressant, stimulant, or hallucinogenic drugs.

SECTION 242. 961.48 (5) of the statutes is amended to read:

961.48 **(5)** This section does not apply if the person is presently charged with a felony under s. 961.41 (3g) (c), (d), ~~(e),~~ or (g).

SECTION 243. 961.49 (1m) (intro.) of the statutes is amended to read:

961.49 **(1m)** (intro.) If any person violates s. 961.41 (1) (cm), (d), (e), (f), or (g) ~~or (h)~~ by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), or (g) ~~or (h)~~ by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, or methcathinone ~~or any form of tetrahydrocannabinols~~ or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

SECTION 244. 961.571 (1) (a) 7. of the statutes is repealed.

SECTION 245. 961.571 (1) (a) 11. (intro.) of the statutes is amended to read:

961.571 **(1)** (a) 11. (intro.) Objects used, designed for use or primarily intended for use in ingesting, inhaling, or otherwise introducing ~~marijuana,~~ cocaine, hashish or hashish oil into the human body, such as:

SECTION 246. 961.571 (1) (a) 11. e. of the statutes is repealed.

SECTION 247. 961.571 (1) (a) 11. k. and L. of the statutes are repealed.

SECTION 248. Subchapter VIII of chapter 961 [precedes 961.70] of the statutes is created to read:

CHAPTER 961

SUBCHAPTER VIII

REGULATION OF MARIJUANA

961.70 Definitions. In this subchapter:

(1) "Compassion center" has the meaning given in s. 50.80 (1).

(2) "Legal age" means 21 years of age.

(5) "Permissible amount" means one of the following:

(a) For a person who is a resident of Wisconsin, an amount that does not exceed 2 ounces of usable marijuana.

(b) For a person who is not a resident of Wisconsin, an amount that does not exceed one–quarter ounce of usable marijuana.

(6) "Permittee" has the meaning given under s. 139.97 (10).

(7) "Qualifying patient" has the meaning given in s. 50.80 (6).

(8) "Retail outlet" has the meaning given in s. 139.97 (11).

(9) "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 tetrahydrocannabinolic acid in any part of the plant Cannabis regardless of moisture content.

(10) "Treatment team" has the meaning given in s. 50.80 (8).

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

(12) "Usable marijuana" has the meaning given in s. 139.97 (13).

961.71 Underage persons prohibitions; penalties. (1) (a) 1. No permittee may sell, distribute, or deliver marijuana to any underage person, except that a permittee that is also a compassion center may sell, distribute, or deliver to an underage person who is a qualifying patient or to a treatment team.

2. No permittee or compassion center may directly or indirectly permit an underage person to violate sub. (2m).

(b) 1. A permittee that violates par. (a) 1. or 2. may be subject to a forfeiture of not more than $500 and to a suspension of the permittee's permit for an amount of time not to exceed 30 days.

2. A compassion center that violates par. (a) 2. may be subject to a forfeiture of not more than $500.

(c) In determining whether a permittee or compassion center has violated par. (a) 2., all relevant circumstances surrounding the presence of the underage person may be considered. In determining whether a permittee has violated par. (a) 1., all relevant circumstances surrounding the selling, distributing, or delivering of marijuana may be considered. In addition, proof of all of the following facts by the permittee or compassion center is a defense to any prosecution for a violation under par. (a):

1. That the underage person falsely represented that he or she had attained the legal age.

2. That 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. That 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.

4. That the underage person supported the representation under subd. 1. with documentation that he or she had attained the legal age.

(2) Any underage person who does any of the following is subject to a forfeiture of not less than $250 nor more than $500:

(a) Procures or attempts to procure marijuana from a permittee.

(b) Falsely represents his or her age for the purpose of receiving marijuana from a permittee.

(c) Knowingly possesses or consumes marijuana, except that this paragraph does not apply to an underage person who is a qualifying patient.

(d) Violates sub. (2m).

(2m) An underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal age may not enter, knowingly attempt to enter, or be on the premises of a retail outlet that is not a compassion center. An underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal age or by his or her treatment team may not enter, knowingly attempt to enter, or be on the premises of a compassion center.

(3) An 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:

(a) Permits or fails to take action to prevent a violation of sub. (2) (c) on premises owned by the individual or under the individual's control.

(b) Encourages or contributes to a violation of sub. (2) (a).

961.72 Restrictions; penalties. (1) No person except a permittee or a compassion center may sell, or possess with the intent to sell, marijuana. No person may distribute or deliver, or possess with the intent to distribute or deliver, marijuana except a permittee or except a compassion center or a member of a treatment team who distributes or delivers, or possesses with the intent to distribute or deliver, to a qualifying patient. Any person who violates a prohibition under this subsection is guilty of the following:

(a) Except as provided in par. (b), a Class I felony.

(b) 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 3 years older than the individual to whom the marijuana is, or is intended to be, sold, distributed, or delivered, a Class H felony.

(2) (a) A person that is not a permittee or a compassion center who possesses an amount of marijuana that exceeds the permissible amount but does not exceed 28 grams of marijuana is subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both.

(b) A person who is not a permittee, a compassion center, a qualifying patient, or a treatment team member who possesses an amount of marijuana that exceeds 28 grams of marijuana:

1. Except as provided in subd. 2., a Class B misdemeanor.

2. A Class I felony if the person has taken action to hide how much marijuana the person possesses and any of the following applies:

a. The person has in place 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.

b. 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.

c. The person has rigged a system so that any individual approaching the area may be injured or killed by the system.

(c) A person who is not a permittee, a compassion center, a qualifying patient, or a treatment team member who possesses more than 6 marijuana plants that have reached the flowering stage at one time is one of the following:

1. Except as provided in subds. 2. and 3., subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both.

2. Except as provided in subd. 3., guilty of a Class B misdemeanor if the number of marijuana plants that have reached the flowering stage is more than 12.

3. Guilty of a Class I felony if the number of marijuana plants that have reached the flowering stage is more than 12, if the individual has taken action to hide the number of marijuana plants that have reached the flowering stage, and if any of the following applies:

a. The person has in place a system that could alert the person if law enforcement approaches an area that contains marijuana plants if the system exceeds a security system that would be used by a reasonable person in the person's region.

b. The person has in place a method of intimidating individuals who approach an area that contains marijuana plants if the method exceeds a method that would be used by a reasonable person in the person's region.

c. The person has rigged a system so that any individual approaching the area that contains marijuana plants may be injured or killed by the system.

(d) No person except a qualifying patient, a member of a treatment team, a permittee, or a compassion center may possess marijuana plants that have reached the flowering stage. Any person who violates this prohibition must apply for a permit under s. 139.979; in addition, the person is one of the following:

1. Except as provided in subds. 2., 3., and 4., subject to a civil forfeiture that is not more than twice the permitting fee under s. 139.979.

2. Except as provided in subds. 3. and 4., subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both if the number of marijuana plants that have reached the flowering stage is more than 6.

3. Except as provided in subd. 4., guilty of a Class B misdemeanor if the number of marijuana plants that have reached the flowering stage is more than 12.

4. Guilty of a Class I felony if the number of marijuana plants that have reached the flowering stage is more than 12, if the person has taken action to hide how many marijuana plants that have reached the flowering stage are being cultivated, and if any of the following applies:

a. The person has in place a system that could alert the person if law enforcement approaches an area that contains marijuana plants if the system exceeds a security system that would be used by a reasonable person in the person's region.

b. The person has in place a method of intimidating individuals who approach an area that contains marijuana plants if the method exceeds a method that would be used by a reasonable person in the person's region.

c. The person has rigged a system so that any individual approaching the area that contains marijuana plants may be injured or killed by the system.

(e) Whoever uses or displays marijuana in a public space is subject to a civil forfeiture of not more than $100.

(3) Any person except a compassion center who sells or attempts to sell marijuana via mail, telephone, or Internet is guilty of a Class A misdemeanor.

SECTION 249. 967.055 (1) (a) of the statutes is amended to read:

967.055 **(1)** (a) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or having a prohibited alcohol concentration, as defined in s. 340.01 (46m), <u>or having a tetrahydrocannabinols concentration of 5.0 or greater,</u> offenses concerning the operation of motor vehicles by persons with a detectable amount of a restricted controlled substance in his or her blood, and offenses concerning the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.

SECTION 250. 967.055 (1) (b) of the statutes is amended to read:

967.055 **(1)** (b) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motorboats by persons under the influence of

an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog to a degree which renders him or her incapable of operating a motorboat safely, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of operating a motorboat safely or having an alcohol concentration of 0.08 or more <u>or a tetrahydrocannabinols concentration of 5.0 or greater</u>.

SECTION 251. 967.055 (1m) (b) 1. of the statutes is amended to read:

967.055 **(1m)** (b) 1. A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 252. 967.055 (1m) (b) 5. of the statutes is repealed.

SECTION 253. 967.055 (2) (a) of the statutes is amended to read:

967.055 **(2)** (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, in deterring the

operation of motor vehicles by persons with a detectable amount of a restricted controlled substance in his or her blood, in deterring the operation of motor vehicles by persons with a tetrahydrocannabinols concentration that is 5.0 or greater, or in deterring the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more. The court may not approve an application to amend the vehicle classification from a commercial motor vehicle to a noncommercial motor vehicle unless there is evidence in the record that the motor vehicle being operated by the defendant at the time of his or her arrest was not a commercial motor vehicle.

SECTION 254. 971.365 (1) (a) of the statutes is amended to read:

971.365 **(1)** (a) In any case under s. 961.41 (1) (em), 1999 stats., or s. 961.41 (1) (cm), (d), (e), (f), or (g) ~~or (h)~~ involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 255. 971.365 (1) (b) of the statutes is amended to read:

971.365 **(1)** (b) In any case under s. 961.41 (1m) (em), 1999 stats., or s. 961.41 (1m) (cm), (d), (e), (f), or (g) ~~or (h)~~ involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 256. 971.365 (1) (c) of the statutes is amended to read:

971.365 **(1)** (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), ~~(e),~~ or (g) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 257. 971.365 (2) of the statutes is amended to read:

971.365 **(2)** An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m) (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (1) (cm), (d), (e), (f), <u>or</u> (g), ~~or (h),~~ (1m) (cm), (d), (e), (f), <u>or</u> (g), ~~or (h)~~ or (3g) (am), (c), (d), ~~(e),~~ or (g) on which no evidence was received at the trial on the original charge.

SECTION 258. 973.016 of the statutes is created to read:

973.016 Special disposition for marijuana-related crimes. (1) RESENTENCING PERSONS SERVING A SENTENCE OR PROBATION. (a) A person serving a sentence or on probation may request resentencing or dismissal as provided under par. (b) if all of the following apply:

1. The sentence or probation period was imposed for a violation of s. 961.41 (1) (h), 2017 stats., s. 961.41 (1m) (h), 2017 stats., or s. 961.41 (3g) (e), 2017 stats.

2. One of the following applies:

a. The person would not have been guilty of a crime had the violation occurred on or after the effective date of this subd. 2. a. .... [LRB inserts date].

b. The person would have been guilty of a lesser crime had the violation occurred on or after the effective date of this subd. 2. b. .... [LRB inserts date].

(b) 1. A person to whom par. (a) applies shall file a petition with the sentencing court to request resentencing, adjustment of probation, or dismissal.

2. If the court receiving a petition under subd. 1. determines that par. (a) applies, the court shall schedule a hearing to consider the petition. At the hearing, if the court determines that par. (a) 2. b. applies, the court shall resentence the person or adjust the probation and change the record to reflect the lesser crime, and, if the court determines that par. (a) 2. a. applies, the court shall dismiss the conviction and

expunge the record. Before resentencing, adjusting probation, or dismissing a conviction under this subdivision, the court shall determine that the action does not present an unreasonable risk of danger to public safety.

3. If the court resentences the person or adjusts probation, the person shall receive credit for time or probation served for the relevant offense.

(2) REDESIGNATING OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR PROBATION. (a) A person who has completed his or her sentence or period of probation may request under par. (b) expungement of the conviction because the conviction is legally invalid or redesignation to a lesser crime if all of the following apply:

1. The sentence or probation period was imposed for a violation of s. 961.41 (1) (h), 2017 stats., s. 961.41 (1m) (h), 2017 stats., or s. 961.41 (3g) (e), 2017 stats.

2. One of the following applies:

a. The person would not have been guilty of a crime had the violation occurred on or after the effective date of this subd. 2. a. .... [LRB inserts date].

b. The person would have been guilty of a lesser crime had the violation occurred on or after the effective date of this subd. 2. b. .... [LRB inserts date].

(b) 1. A person to whom par. (a) applies shall file a petition with the sentencing court to request expungement or redesignation.

2. If the court receiving a petition under subd. 1. determines that par. (a) applies, the court shall schedule a hearing to consider the petition. At the hearing, if the court determines that par. (a) 2. b. applies, the court shall redesignate the crime to a lesser crime and change the record to reflect the lesser crime, and if the court determines that par. (a) 2. a. applies, the court shall expunge the conviction. Before redesignating or expunging under this subdivision, the court shall determine that the action does not present an unreasonable risk of danger to public safety.

(3) EFFECT OF RESENTENCING, DISMISSAL, REDESIGNATION, OR EXPUNGEMENT. 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, including for purposes of s. 941.29 or 18 USC 921.

SECTION 259. Nonstatutory provisions.

(1) JOINT LEGISLATIVE COUNCIL STUDY. The joint legislative council shall study the implementation of the marijuana tax and regulation provided under subch. IV of ch. 139 and identify uses for the revenues generated by the tax. The joint legislative council shall report its findings, conclusions, and recommendations to the joint committee on finance no later than 2 years after the effective date of this subsection.

SECTION 260. Initial applicability.

(1) INSURANCE COVERAGE OF MEDICAL USE OF MARIJUANA.

(a) For policies and plans containing provisions inconsistent with this act, the treatment of ss. 609.83 and 632.895 (16p) first applies to policy or plan years beginning on January 1 of the year following the year in which this paragraph takes effect, except as provided in par. (b).

(b) For policies or plans that are affected by a collective bargaining agreement containing provisions inconsistent with this act, the treatment of ss. 609.83 and 632.895 (16p) first applies to policy or plan years beginning on the effective date of this paragraph or on the day on which the collective bargaining agreement is newly established, extended, modified, or renewed, whichever is later.

(END)

Department of Workforce Development
Unemployment Insurance Division
Unemployment Insurance Advisory Council
201 E. Washington Ave., Rm. E300
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
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STATE OF WISCONSIN
DWD
Department of Workforce Development

Tony Evers, Governor
Caleb Frostman, Secretary

May 20, 2019

Mr. James Balzer
2806 E. Dietzen Dr.
Appleton, WI 54915

Dear Mr. Balzer:

Thank you for contacting the Department of Workforce Development and submitting your comments regarding Wisconsin's Unemployment Insurance (UI) program. I received your letter dated April 25, 2019 and appreciate you sharing your input.

The Council holds a public hearing each biennium for members of the public to offer their recommendations on possible changes to Wisconsin's UI program. Prior to the public hearing, the Council also invites the public to submit written comments for improvements to the UI program to the Department. Most recently, the Council held a public hearing in November 2018. The comments received during the public hearing, along with the written comments submitted to the Department, were presented to the Council at their January 2019 meeting and are being taken into consideration by the Council as they develop potential reform ideas to the state's UI law.

Although the input that was provided during the public hearing comment period has already been presented to the Council, correspondence sent to the Council outside of the comment period is shared with the Council at its next regularly scheduled meeting. The next Council meeting is scheduled for May 22, 2019 at 10:00 a.m. and your letter will be shared with the Council at that time. Information on Council meetings can be found on our website at: https://dwd.wisconsin.gov/uibola/uiac/ .

I hope this information has been helpful. Thank you again for sharing your comments and for your interest in the UI program.

Sincerely,

Janell Knutson, Chair
Unemployment Insurance Advisory Council

Janell Knutson
Chair of the Advisory Committee
201 E Washington Ave.
Madison, WI 53708

April 25, 2019

James Balzer
Unemployment Recipient
2806 E Dietzen Dr.
Appleton, WI 54915
920.750.0051

Dear Janell Knutson,

I am writing you this letter today with some major concerns I have with our Wisconsin Unemployment System which I feel need to be immediately addressed and changed. I feel that these issues are completely unfair to the honest and hard working people who have gainful employment, and who occasionally get laid off due to unforeseen factors such as weather or brief periods of lack of work.

My first issue is with the one week waiting period. Our employers pay into the unemployment fund for the hours that we work. And when we get laid off for an unforeseen reason, we should be able to collect our benefits when we apply for them. This one week waiting period only causes more of a financial burden to us and our families.

My second issue with the Wisconsin Unemployment System is the rate of Unemployment in which recipients receive. I am a Union Carpenter and currently make a wage of $34.93 per hour and my weekly benefit rate is the maximum allowed amount of $370.00 per week. Having worked hard all my life to improve my career and subsequently my quality of life for myself and my family, I feel it is incredibly unfair to receive the same benefit rate as someone who works at a job making a salary of $12.00 per hour.

Again, our employers pay into unemployment for our hours worked, and the higher salary we receive the high amount of money our employers pay into unemployment. So it would only seem fair that higher salary scaled employees should receive a higher benefit amount from Unemployment. We have mortgages, car payment, monthly expenses, ect. And at the current maximum rate of $370.00 per week, it is impossible to pay our regular monthly expenses, causing hardship on us and our families, and potentially creating problems with our financial institutions.

If you could kindly look into and even possibly address these issues that would be greatly appreciated. I will be looking forward to your response, and if there would ever be any upcoming meetings or hearing considering such changes, and the general public are invited to speak, I would truly like to be invited.

Thank you for your time looking into this matter.

Sincerely,

James Balzer

UIAC Proposal Tracking – 2019

No.	Proposal Title	Proposal Subject	Presented to UIAC	Action
D19-01	Reimbursable Employer Debt Assessment Charging	REDA access to imposter funds	3-21-19	
D19-02	Assessment for Failure to Produce Records	Subpoena Penalty	3-21-19	
D19-03	Fiscal Agent Election of Employer Status	Fiscal Agents	3-21-19	
D19-04	Clarification of Employee Status Statute	Employee Status	3-21-19	
D19-05	Clarification of Exemptions Laws	Levy Exemptions	3-21-19	
D19-06	SUTA Dumping Penalty	SUTA Dumping	3-21-19	
D19-07	Departmental Error	Department Error	3-21-19	
D19-08	Appropriation Revisions and Technical Corrections	Cross Reference & Technical Clean-Up and Appropriation Revisions	3-21-19	
D19-09	Creation of Administrative Fund	IP Lapse and Admin Fund	3-21-19	
D19-10	Update Administrative Rules to Convert SIC to NAICS	Amend SIC to NAICS Codes	3-21-19	Scope Approved on 3-21-19
D19-11	Repeal of UI Drug Testing	Drug Testing	3-21-19	
D19-12	Repeal of Substantial Fault	Substantial Fault	3-21-19	
D19-13	Define Suitable Work by Administrative Rule	Suitable Work	3-21-19	
D19-14	Quit Exception for Relocating Spouse	Quit Exception	3-21-19	
D19-15	Increase and Index Maximum Wage Cap for the Partial Benefits Formula	Wage Threshold	3-21-19	
D19-16	Repeal Waiting Week	Waiting Week	3-21-19	
D19-17	Repeal Work Search and Work Registration Requirements	Work Search & Work Registration	Tabled	
D19-18	Increase Maximum Weekly Benefit Rate to $406	Increase WBR to $406	3-21-19	

Unemployment Insurance Advisory Council
Tentative Schedule
2019
(Updated 05/22/2019)

January 17, 2019	Scheduled Meeting of UIAC Discuss Public Hearing (Nov. 15, 2018) Comments
February 21, 2019	Scheduled Meeting of UIAC (Cancelled)
March 21, 2019	Scheduled Meeting of UIAC Introduce Department Law Change Proposals
April 18, 2019	Scheduled Meeting of UIAC Discuss Department Proposals
May 22, 2019	Re-Scheduled Meeting of UIAC Approve/Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
June 2019	Tentative Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
June 20, 2019	Scheduled Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
July 18, 2019	Scheduled Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
August 15, 2019	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
September 19, 2019	**Scheduled Meeting of UIAC** **Review and Approval of Department Draft of Agreed Upon Bill**
October 17, 2019	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
November 21, 2019	**Scheduled Meeting of UIAC** **Final Review and Approval of LRB Draft of Agreed Upon Bill**
December 2019	Tentative Meeting of UIAC – If Needed
January 2020	**Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session**