State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3671/1
CMH/JK/EVM:sac:jf

2013 BILL

AN ACT ***to repeal*** 23.33 (1) (jo) 5., 30.50 (10m) (e), 340.01 (50m) (e), 350.01 (10v) (e), 885.235 (1) (d) 5., 939.22 (33) (e), 961.14 (4) (t), 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); ***to renumber and amend*** 961.01 (14) and 961.34; ***to amend*** 23.33 (1) (jo) 1., 23.33 (4c) (a) 4., 23.33 (4c) (a) 5., 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) (e), 30.50 (10m) (a), 30.681 (1) (b) (title), 30.681 (1) (bn) (title), 30.681 (1) (c), 30.681 (1) (d), 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), 59.54 (25), 66.0107 (1) (bm), 85.53 (1) (d), 139.87 (7), 340.01 (50m) (a), 343.10 (5) (a) 1., 343.10 (5) (a) 2., 343.12 (7) (a) 11., 343.16 (2) (b), 343.16 (5) (a), 343.30 (1p), 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 (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) (am) 5. a., 343.305 (9) (am) 5. c., 343.305 (9) (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), 344.576 (2) (b), 346.63 (1) (b), 346.63 (1) (d), 346.63 (2) (a) 2., 346.63 (2) (b) 1., 346.63 (2) (b) 2., 346.65 (2m) (a), 346.65 (2q), 349.03 (2m), 349.06 (1m), 350.01 (10v) (a), 350.101 (1) (d), 350.101 (1) (e), 350.101 (2) (c), 350.101 (2) (d) 1., 350.101 (2) (d) 2., 350.104 (4), 350.11 (3) (d), 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), 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*** 20.566 (1) (v), 23.33 (1) (k), 23.33 (4c) (a) 2g., 23.33 (4c) (a) 3g., 23.33 (4c) (b) 2n., 25.56, 30.50 (13p), 30.681 (1) (b) 1g., 30.681 (1) (bn) 2., 30.681 (2) (b) 1g., subchapter V (title) of chapter 139 [precedes 139.97], 139.97, 139.971, 139.972, 139.973, 139.974, 139.975, 139.976, 139.977, 139.978, 340.01 (66m), 343.305 (5) (dm), 346.63 (2p), 350.01 (21g), 350.101 (1) (bg), 350.101 (1) (cg), 350.101 (2) (bg), 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), 940.25 (1) (bg), 940.25 (1) (dg), 941.20 (1) (bg) and subchapter VIII of chapter 961 [precedes 961.70] of the statutes; **relating to:** marijuana possession, regulation of marijuana distribution, operating a motor vehicle while under the

influence of marijuana, making an appropriation, requiring the exercise of rule–making authority, and providing penalties.

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 a Wisconsin resident who is over the age of 21 to possess no more than one–half an ounce of marijuana, 8 ounces of marijuana–infused product in solid form, or 36 ounces of marijuana–infused product in liquid form and so that state law permits a nonresident of Wisconsin who is over the age of 21 to possess no more than a quarter ounce of marijuana, 4 ounces of marijuana–infused product in solid form, or 18 ounces of marijuana–infused product in liquid form. This bill also eliminates the prohibition on possessing or using drug paraphernalia that relates to marijuana consumption. A person who possesses more than the maximum amount but not more than 20 grams of marijuana is subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both and a person who possesses more than 20 grams of marijuana is guilty of a Class I felony. In addition, under the bill, the cultivation of marijuana is a Class I felony and the use of marijuana in public is subject to a civil forfeiture of not more than $100.

This bill also creates a process by which a person may obtain a permit to sell marijuana. Under this bill, a person who does not have a permit 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.

This bill prohibits a permittee from selling, distributing, or transferring marijuana to a minor and from permitting 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 this 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; or knowingly enters any premises for which a permit has been issued.

This 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.

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:

20.566 Department of revenue

(1) COLLECTION OF TAXES

(v) Administration and enforcement of marijuana tax and regulation	SEG	A	–0–	1,100,800

SECTION 2. 20.566 (1) (v) of the statutes is created to read:

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

SECTION 3. 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 4. 23.33 (1) (jo) 5. of the statutes is repealed.

SECTION 5. 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 6. 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 7. 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 8. 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 9. 23.33 (4c) (a) 5. of the statutes is amended to read:

23.33 **(4c)** (a) 5. 'Defenses.' 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 or in an action under subd. 2g. or 3g. that is based on the defendant allegedly having

a prohibited tetrahydrocannabinols concentration 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, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 10. 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 11. 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 12. 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 13. 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 or in an action under subd. 2n. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration 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, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 14. 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 15. 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 16. 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 17. 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 18. 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 19. 25.56 of the statutes is created to read:

25.56 Marijuana fund. There is established a separate nonlapsible trust fund, designated as the marijuana fund, consisting of all revenue from the fees, taxes, interest, and penalties under subch. V of ch. 139.

SECTION 20. 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 21. 30.50 (10m) (e) of the statutes is repealed.

SECTION 22. 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 23. 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 marijuana*.

SECTION 24. 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 25. 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 26. 30.681 (1) (bn) of the statutes is renumbered 30.681 (1) (bn) 1.

SECTION 27. 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 (1), 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 28. 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 29. 30.681 (1) (d) of the statutes is amended to read:

30.681 **(1)** (d) *Defenses.* 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 or in an action under par. (b) 1g. or (bn) 2. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration 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, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 30. 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 marijuana.*

SECTION 31. 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 32. 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 33. 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 34. 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 or in an action under par. (b) 1g. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration 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, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 35. 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 36. 30.80 (6) (d) of the statutes is amended to read:

30.80 **(6)** (d) *Alcohol, controlled substances or controlled substance analogs, 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 37. 59.54 (25) of the statutes is amended to read:

59.54 **(25)** ~~POSSESSION~~ REGULATION OF MARIJUANA. The board may enact and enforce an ordinance ~~to prohibit the possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state shall not be prosecuted under this subsection~~ that is consistent with s. 961.71 or 961.72. Any ordinance enacted under this subsection applies in every municipality within the county.

SECTION 38. 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 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following~~

~~a conviction for possession of marijuana, in this state shall not be prosecuted under this paragraph~~ that is consistent with s. 961.71 or 961.72.

SECTION 39. 85.53 (1) (d) of the statutes is amended to read:

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

SECTION 40. 139.87 (7) of the statutes is amended to read:

139.87 **(7)** "Tetrahydrocannabinols" means a substance ~~included in s. 961.14 (4) (t)~~ in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized.

SECTION 41. Subchapter V (title) of chapter 139 [precedes 139.97] of the statutes is created to read:

CHAPTER 139

SUBCHAPTER V

MARIJUANA TAX AND REGULATION

SECTION 42. 139.97 of the statutes is created to read:

139.97 Definitions. In this subchapter:

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

(2) "Lot" means a definite quantity of marijuana, useable marijuana, or marijuana–infused product 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 license 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 processor" means a person who processes marijuana into useable marijuana or marijuana–infused products, packages and labels useable marijuana or marijuana–infused products for sale in retail outlets, or sells useable marijuana or marijuana–infused products at wholesale to marijuana retailers.

(6) "Marijuana producer" means a person who produces marijuana and sells it at wholesale to marijuana processors or other marijuana producers.

(7) "Marijuana–infused product" means a product intended for human consumption that contains marijuana or marijuana extracts, not including useable marijuana.

(8) "Marijuana retailer" means a person who sells useable marijuana or marijuana–infused products at a retail outlet.

(9) "Permittee" means a marijuana producer, marijuana processor, or marijuana retailer who is issued a permit under s. 139.972.

(10) "Retail outlet" means a location for the retail sale of useable marijuana or marijuana–infused products.

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

(12) "Useable marijuana" means dried marijuana flowers, not including dried marijuana flowers that are part of any marijuana–infused product.

SECTION 43. 139.971 of the statutes is created to read:

139.971 Marijuana tax. (1) (a) An excise tax is imposed on a marijuana producer at the rate of 25 percent of the sales price on each wholesale sale in this state of marijuana to a marijuana processor or to another marijuana producer.

(b) An excise tax is imposed on a marijuana processor at the rate of 25 percent of the sales price on each wholesale sale in this state of useable marijuana or marijuana–infused product to a marijuana retailer.

(c) An excise tax is imposed on a marijuana retailer at the rate of 25 percent of the sales price on each retail sale in this state of useable marijuana or marijuana–infused product.

(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. The department shall deposit all taxes collected under this section into the marijuana fund.

SECTION 44. 139.972 of the statutes is created to read:

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

(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, no permit under this section may be granted to any person to whom any of the following applies:

1. The person has been convicted of a misdemeanor, not involving chs. 340 to 349, at least 3 times.

2. The person has been convicted of a felony, unless pardoned.

3. The person is addicted to the use of a controlled substance or controlled substance analog under ch. 961.

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

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

6. 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.

7. The person is under the age of 21.

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

(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 the permit applicant intends to operate a retail outlet or other premises of a marijuana producer, marijuana processor, or marijuana retailer. 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, or 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. 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 $1,000 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 it's 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. The department shall deposit the fees collected under this subsection into the marijuana fund.

(3) The department may not issue a permit under this section to operate any premises which are within 1,000 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 shall perform only the operations authorized by the permit. A permit issued under this section is not transferrable 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, or marijuana retailer 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 or marijuana processor.

(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.

SECTION 45. 139.973 of the statutes is created to read:

139.973 Regulation. (1) No person who is issued a permit under s. 139.972 may employ a person who is under the age of 21 to work in the business to which the permit relates.

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

(3) No marijuana retailer may allow a person who is under the age of 21 to enter or remain on the premises of a retail outlet.

(4) The maximum amount of useable marijuana or marijuana–infused product that a retail outlet may sell to an individual consumer in a single transaction may not exceed the permissible amount under s. 961.70 (3g).

(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 useable marijuana or marijuana–infused products 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 useable marijuana or marijuana–infused product on the premises of the retail outlet.

(8) No marijuana producer, marijuana processor, or marijuana retailer may place or maintain, or cause to be placed or maintained, an advertisement of useable marijuana or a marijuana–infused product in any form or through any medium in any of the following locations:

(a) Within 1,000 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.

(b) On or in a public transit vehicle or public transit shelter.

(c) On or in a publicly owned or publicly operated property.

(9) (a) On a schedule determined by the department, every marijuana producer and marijuana processor shall submit representative samples of the marijuana, useable marijuana, or marijuana–infused products produced or processed by the marijuana producer or marijuana processor to an independent 3rd–party testing laboratory that satisfies the accreditation criteria, prescribed by the department by rule, for inspecting and testing marijuana, useable marijuana, and

marijuana–infused products in order to certify that the marijuana, useable marijuana, and marijuana–infused products comply with standards prescribed by the department by rule. The laboratory testing the sample shall destroy any part of the sample that remains after the testing.

(b) Marijuana producers and marijuana processors 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 inspected and 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.

SECTION 46. 139.974 of the statutes is created to read:

139.974 Records and reports. (1) Every person issued a permit under s. 139.972 shall keep accurate and complete records of the production and sales of marijuana, useable marijuana, and marijuana–infused products 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 of revenue shall publish production and sales statistics.

SECTION 47. 139.975 of the statutes is created to read:

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, useable marijuana, or marijuana–infused products are 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 out of the marijuana fund. 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, useable marijuana, or a marijuana–infused product 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.

SECTION 48. 139.976 of the statutes is created to read:

139.976 Theft of tax moneys. All marijuana tax moneys received by a permittee for the sale of marijuana, useable marijuana, and marijuana–infused products 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.

SECTION 49. 139.977 of the statutes is created to read:

139.977 Seizure and confiscation. (1) All marijuana, useable marijuana, and marijuana–infused products 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, useable marijuana, or marijuana–infused products, is unlawful property and subject to seizure by the department or a law enforcement officer. Except as provided in sub. (2), all marijuana, useable marijuana, and marijuana–infused products seized under this subsection shall be destroyed.

(2) If marijuana, useable marijuana, or marijuana–infused products on which the tax has not been paid are seized as provided under sub. (1), they may be given to law enforcement officers to use in criminal investigations or sold to qualified buyers by the department, without notice. If the marijuana, useable marijuana, or marijuana–infused products are sold, after deducting the costs of selling and storing the property, the department shall pay the sale proceeds into the marijuana fund. If the department finds that the marijuana, useable marijuana, or marijuana–infused products 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 them destroyed.

(3) If marijuana, useable marijuana, or marijuana–infused products on which the tax has been paid are seized as provided under sub. (1) they 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, useable marijuana, or marijuana–infused products, they may be sold or otherwise disposed of as provided in sub. (2).

(4) If tangible personal property other than marijuana, useable marijuana, and marijuana–infused products 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. In case of a sale, the net proceeds after deducting costs, expenses, and established claims shall be paid into the marijuana fund.

SECTION 50. 139.978 of the statutes is created to read:

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 be 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 automatically 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.

SECTION 51. 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 52. 340.01 (50m) (e) of the statutes is repealed.

SECTION 53. 340.01 (66m) of the statutes is created to read:

340.01 **(66m)** "Tetrahydrocannabinols concentration" has the meaning given in s. 23.33 (1) (k).

SECTION 54. 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 55. 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 56. 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 57. 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 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 or person acting under the direction of a physician.

SECTION 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 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 his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 81. 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 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 his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

SECTION 82. 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, tetrahydrocannabinols, a controlled substance or a controlled substance analog, or any combination of an intoxicant, tetrahydrocannabinols, 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 or tetrahydrocannabinols concentration and which is criminal under s. 346.63 (2).

SECTION 83. 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 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 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 84. 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 85. 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 86. 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 87. 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 or tetrahydrocannabinols concentration or intoxication or the amount of a restricted controlled substance in the operator's blood.

SECTION 88. 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) or (2p), 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 89. 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 90. 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 91. 346.63 (1) (d) of the statutes is amended to read:

346.63 **(1)** (d) 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 or 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 methamphetamine or one of its

metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 92. 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 93. 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 94. 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 or 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 methamphetamine or one of its

metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 95. 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 (1), the person may not drive or operate a motor vehicle while he or she has an 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 96. 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 97. 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 346.63 (2m) or (2p), the person shall be fined $400.

SECTION 98. 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 99. 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 100. 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 101. 350.01 (10v) (e) of the statutes is repealed.

SECTION 102. 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 103. 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 104. 350.101 (1) (cg) of the statutes is created to read:

350.101 **(1)** (cg) *Operating with tetrahydrocannabinols concentration at or above specified levels.* 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 105. 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 106. 350.101 (1) (e) of the statutes is amended to read:

350.101 **(1)** (e) *Defenses.* 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 or 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 methamphetamine or one of its metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 107. 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 108. 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 109. 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 or a tetrahydrocannabinols concentration of 5.0 or more or a detectable amount of a restricted controlled substance in his or her blood.

SECTION 110. 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 or 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 methamphetamine or one of its

metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 111. 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 112. 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 113. 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 114. 885.235 (1) (d) 5. of the statutes is repealed.

SECTION 115. 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 116. 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 or tetrahydrocannabinols 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 or 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 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 or tetrahydrocannabinols 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 117. 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 an 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 118. 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 an tetrahydrocannabinols concentration of 5.0 or more is prima facie evidence that he or she had an tetrahydrocannabinols concentration of 5.0 or more.

SECTION 119. 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 120. 885.235 (1m) of the statutes is amended to read:

885.235 **(1m)** In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn) 1., 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., 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., 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 121. 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., 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 122. 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. 233.33 (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 123. 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 124. 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 125. 939.22 (33) (e) of the statutes is repealed.

SECTION 126. 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 127. 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 128. 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 129. 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 130. 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 131. 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 132. 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. 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 133. 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 134. 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 or in any action under sub. (1) (bg) or (dg) or (1g) (bg) or (dg) that is 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 methamphetamine or one of its metabolic precursors or gamma–hydroxybutyric acid or delta–9–tetrahydrocannabinol.

SECTION 135. 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 136. 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 137. 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. 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 138. 940.25 (2) 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, <u>did not have a tetrahydrocannabinols concentration of 5.0 or greater,</u> or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e).

(b) In any action under this section that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ <u>or</u> gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ in his or her blood <u>or in any action under this section that is based on the defendant allegedly having a tetrahydrocannabinols</u>

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 methamphetamine or one of its metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 139. 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 delta–9–tetrahydrocannabinol.

SECTION 140. 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 141. 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 concentration of tetrahydrocannabinols 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 142. 961.14 (4) (t) of the statutes is repealed.

SECTION 143. 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 144. 961.41 (1) (h) of the statutes is repealed.

SECTION 145. 961.41 (1m) (h) of the statutes is repealed.

SECTION 146. 961.41 (1q) of the statutes is repealed.

SECTION 147. 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, or methcathinone ~~or tetrahydrocannabinols~~ 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 148. 961.41 (3g) (c) of the statutes is amended to read:

961.41 **(3g)** (c) *Cocaine and cocaine base.* If a person possess 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 149. 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, methcathinone, methylenedioxypyrovalerone, 4–methylmethcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone, methylenedioxypyrovalerone, 4–methylmethcathinone, 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 150. 961.41 (3g) (e) of the statutes is repealed.

SECTION 151. 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) to (ty), or a controlled substance analog of a controlled substance specified in s. 961.14 (4) (tb) to (ty), 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 152. 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 153. 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 154. 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 155. 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 156. 961.571 (1) (a) 7. of the statutes is repealed.

SECTION 157. 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 158. 961.571 (1) (a) 11. e. of the statutes is repealed.

SECTION 159. 961.571 (1) (a) 11. k. and L. of the statutes are repealed.

SECTION 160. 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) "Legal age" means 21 years of age.

(3c) "Marijuana–infused product" has the meaning given in s. 139.97 (7).

(3g) "Permissible amount" means one of the following:

(a) For a person who is a resident of Wisconsin, an amount that does not exceed one–half an ounce of useable marijuana, 8 ounces of marijuana–infused product in solid form, or 36 ounces of marijuana–infused product in liquid form.

(b) For a person who is not a resident of Wisconsin, an amount that does not exceed one–quarter an ounce of useable marijuana, 4 ounces of marijuana–infused product in solid form, or 18 ounces of marijuana–infused product in liquid form.

(3m) "Permittee" has the meaning given under s. 139.97 (9).

(4) "Tetrahydrocannabinols concentration" means 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.

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

(6) "Useable marijuana" has the meaning given in s. 139.97 (12).

961.71 Underage persons prohibitions; penalties. (1) (a) 1. No permittee may sell, distribute, or transfer marijuana to any underage person.

2. No permittee may directly or indirectly permit an underage person to enter or be on a permitted premises in violation of sub. (2) (d).

(b) A permittee who violates par. (a) 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.

(c) In determining whether a permittee has violated par. (a), all relevant circumstances surrounding the presence of the underage person or the selling, transferring, or distributing of marijuana may be considered. In addition, proof of all of the following facts by a permittee regarding a sale to an underage person is a defense to any prosecution for a violation of par. (a):

1. That the purchaser falsely represented that he or she had attained the legal age.

2. That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal age.

3. That the sale was made in good faith and in reliance on the representation and appearance of the purchaser in the belief that the purchaser 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.

(d) Knowingly enters or attempts to enter or be on any premises for which a permit has been issued.

(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 the illegal consumption of marijuana by an individual who has not attained the legal age on premises owned by the actor or under the actor's control.

(b) Encourages or contributes to a violation of sub. (2) (a).

961.72 Restrictions; penalties. (1) An individual who is not a permittee who sells, distributes, or transfers marijuana, or possesses marijuana with the intent to sell or distribute it, 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 transferred has not attained the legal age and the actual or intended

seller, distributor, or transferor is at least 3 years older than the individual to whom the marijuana is, or is intended to be, sold, distributed, or transferred, a Class H felony.

(2) (a) An individual who is not a permittee who possesses an amount of marijuana that exceeds the permissible amount but does not exceed 20 grams of marijuana is subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both.

(b) An individual who is not a permittee who possesses an amount of marijuana that exceeds 20 grams of marijuana is guilty of a Class I felony.

(c) An individual who is not a permittee who cultivates marijuana is guilty of a Class I felony.

(d) Whoever uses or displays marijuana in a public space is subject to a civil forfeiture of not more than $100.

SECTION 161. 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), or having a tetrahydrocannabinols concentration of 5.0 or greater, 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 162. 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 or a tetrahydrocannabinols concentration of 5.0 or greater.

SECTION 163. 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 164. 967.055 (1m) (b) 5. of the statutes is repealed.

SECTION 165. 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 166. 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 167. 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 168. 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 169. 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), or (g), ~~or (h),~~ (1m) (cm), (d), (e), (f), or (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 170. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.

(END)