

CO-SPONSORSHIP MEMORANDUM

TO: All Legislators
FROM: Representative Melissa Sargent
DATE: July 13, 2017
RE: Co-Sponsorship of LRB-2457/1 relating to: the legalization of marijuana
DEADLINE: Thursday, July 27, 2017 by 5:00 p.m.

It's no secret that Wisconsin is in the midst of a severe budget crisis, between our billion-dollar deficit, insolvent transportation fund, and no real plan to increase revenue without raising taxes. The 2017-2019 budget is already almost two weeks late, and Joint Finance Committee--which hasn't met in nearly a month--has no upcoming meetings scheduled. Suggestions to address the crisis have ranged from collecting fees for heavy trucks, implementing toll roads, and even borrowing \$341 million from the federal government, none of which have had much support.

In light of this, today I'm introducing a bill to fully legalize marijuana in Wisconsin. Twenty six states around the country—and even some bordering Wisconsin—have seen firsthand the tremendous economic stimulus legalizing marijuana has provided to their state, and given the dire financial position Wisconsin is in, it's time for legalization to be given serious consideration. The most dangerous thing about marijuana is that it's illegal, and as our budget crisis worsens, more states legalize, and we continue to see new evidence to support legalization's economic benefits, the more unjustifiable—and even foolish—it becomes to put off legalizing marijuana in Wisconsin.

Recent [economic analyses](#) have shown the economic boom resulting from full legalization in Colorado: in 2015 alone, the state saw \$1 billion in marijuana sales and more than 18,000 new jobs. Marijuana in Colorado generates more per dollar in economic output and employment than 90 percent of the state's other industries. It is also estimated that by 2020, marijuana will also be the state's highest excise revenue source.

These statistics demonstrate the economic opportunity available to our state by legalizing marijuana. Given the budget crisis we're facing, we simply can't afford to wait any longer for a solution. Wisconsinites are begging for new, innovative ideas and approaches to reducing our budget deficit, permanently stabilizing our transportation fund, and increasing funding for things like public education, and that's what this bill is. It's not just about legalizing marijuana—it's about legalizing opportunity in Wisconsin—and I hope you'll consider joining me in offering a real, proven solution to our budget crisis.

Attached to this bill is a copy of the bill text as well as a document with some frequently asked questions and clarifications—the bill is 100 pages, after all. My office would be glad to answer any other questions or concerns you might have, and I'm more than happy to meet with you individually if that's something you might be interested in.

If you would like to co-sponsor this legislation please reply to this email or call Representative Sargent's office at 266-0960 by 5:00 PM on Thursday, July 28.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing, distributing, or delivering marijuana; possessing marijuana with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess marijuana; using drug paraphernalia; or possessing drug paraphernalia with the intent to produce, distribute, or use a controlled substance. This bill changes state law so that state law permits both recreational use of marijuana and medical use of marijuana.

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

This bill prohibits the sale of marijuana for recreational use via mail, telephone, or Internet. A person who violates this prohibition is guilty of a Class A misdemeanor. This bill prohibits the use of marijuana in public. A person who violates this prohibition 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 produce, process, or sell marijuana for recreational use and pay an excise tax for the privilege of doing business in this state. 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 for recreational use; or knowingly enters any premises for which a permit has been issued without being accompanied by his or her parent, guardian, or spouse who is at least 21 years of age.

In addition, under this bill, a person who cultivates more than six marijuana plants at one time is required to have a permit. A person without a permit who cultivates more than six plants at one time but not more than 12, is subject to a civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days or both. If the person cultivates more than 12 plants at one time, the person is guilty of a Class B misdemeanor, except that, if the person takes action to hide the number of plants he or she has and the person has in place a security system to alert him

or her to the presence of law enforcement, a method of intimidation, or a trap that could injure or kill a person approaching the area containing the plants, the person is guilty of a Class I felony.

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

The bill requires the Department of Health Services to establish a registry for persons who use marijuana for medical use. Under the bill, a person may apply for a registry identification card by submitting to DHS a signed application, a written certification by the person's physician that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits of the person's use of tetrahydrocannabinols would likely outweigh the health risks for the person, and a registration fee of not more than \$150. DHS must verify the information and issue the person a registry identification card. A registry identification card is generally valid for four years and may be renewed. DHS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. This bill also requires DHS to promulgate a rule listing other jurisdictions that allow the medical use of marijuana by a visiting person or allow a person to assist with a person's medical use of marijuana. This bill treats documents issued by these entities the same as registry identification cards issued by DHS.

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

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

Under the fair employment law, no employer or other person may engage in any act of employment discrimination against any individual on the basis of the individual's use or nonuse of lawful products off the employer's premises during nonworking hours, subject to certain exceptions, one of which is if the use impairs the individual's ability to undertake adequately the

job-related responsibilities of that individual's employment. The bill specifically defines marijuana as a lawful product for purposes of the fair employment law, such that no person may engage in any act of employment discrimination against an individual due to the individual's use of marijuana off the employer's premises during nonworking hours, subject to those exceptions.

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

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

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

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.

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