

## 1999 ASSEMBLY BILL 185

March 8, 1999 – Introduced by Representatives HUEBSCH, KESTELL, HASENOHRL, PLALE, SUDER, FREESE, RHOADES, ALBERS, SPILLNER, LADWIG, BRANDEMUEHL, SERATTI, F. LASEE, SYKORA, GOETSCH, M. LEHMAN, VRAKAS, MONTGOMERY, LASSA, GUNDERSON, PETROWSKI, OWENS, PETTIS and TOWNSEND, cosponsored by Senators MOEN, FITZGERALD, HUELSMAN, LAZICH, ROESSLER and DARLING. Referred to Committee on Judiciary and Personal Privacy.

- 1 **AN ACT** *to renumber* 961.20 (2) (ej); and *to amend* 961.492 (1) of the statutes;
- 2 **relating to:** the controlled substance flunitrazepam.

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### ***Analysis by the Legislative Reference Bureau***

Current law places various restrictions on controlled substances (dangerous drugs). The substances are regulated based on their schedule designations. The legislature or the controlled substances board places a controlled substance in schedule I, II, III, IV or V based on the substance's accepted medical use and the potential for abuse of the substance. Schedule IV includes substances that have a currently accepted medical use in treatment in the United States and that, if abused, lead to limited physical or psychological dependence.

The controlled substance flunitrazepam (a depressant) is currently placed in schedule IV. The penalty for unlawful possession of flunitrazepam is a fine of not more than \$5,000 or imprisonment for not more than two years or both. The penalty for unlawful manufacture, distribution or delivery of flunitrazepam, or for unlawful possession of flunitrazepam with intent to manufacture, distribute or deliver, is a fine of not more than \$10,000 or imprisonment for not more than three years or both, if the offense occurs before December 31, 1999. For offenses occurring on or after December 31, 1999, the maximum period of imprisonment is increased to four years and six months.

This bill places flunitrazepam into schedule I, which includes substances that have no currently accepted medical use in treatment in the United States, have a high potential for abuse and lack accepted safety for use in treatment under medical supervision. Because of the way current law treats schedule I controlled substances, the bill's placement of flunitrazepam into schedule I has the following consequences:

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1. The maximum penalty for unlawful manufacture, distribution or delivery of flunitrazepam and for unlawful possession of flunitrazepam with intent to manufacture, distribute or deliver is increased to a fine of not more than \$15,000 or imprisonment for not more than five years or both, if the offense occurs before December 31, 1999. For offenses occurring on or after December 31, 1999, the maximum period of imprisonment is increased to seven years and six months. Placement of flunitrazepam into schedule I does not change the penalty for the unlawful possession of flunitrazepam.

2. Certain minimum and increased penalties will apply to violations involving flunitrazepam. For example, the unlawful manufacture, distribution or delivery of, or possession with intent to manufacture, distribute or deliver, flunitrazepam within 1,000 feet of a school, park or certain other places will carry a minimum three-year sentence of imprisonment. However, the bill provides that the penalty enhancer for delivering or possessing with intent to distribute or deliver a schedule I controlled substance on public transit vehicles does not apply to violations involving flunitrazepam.

3. A person may be subject to prosecution for first-degree reckless homicide if he or she causes the death of another by unlawful manufacture, distribution or delivery of flunitrazepam or by administering flunitrazepam. (A person convicted of first-degree reckless homicide may be imprisoned for not more than 40 years, if the offense occurs before December 31, 1999, or for not more than 60 years, if the offense occurs on or after December 31, 1999.)

4. A person who possesses, manufactures, produces, ships, transports, delivers, distributes, imports, sells or transfers to another person more than seven grams of flunitrazepam will be considered a dealer of flunitrazepam and will be required to pay an occupational tax on the flunitrazepam. A dealer who fails to pay the required occupational tax may be subject to pay a penalty equal to the amount of the tax due and may also be fined not more than \$10,000 or imprisoned for not more than five years or both, if the failure to pay the tax occurs before December 31, 1999. If the failure to pay the tax occurs on or after December 31, 1999, the dealer may be fined not more than \$10,000 or imprisoned for not more than seven years and six months or both.

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

1           **SECTION 1.** 961.20 (2) (ej) of the statutes is renumbered 961.14 (5) (af).

2           **SECTION 2.** 961.492 (1) of the statutes is amended to read:

3           961.492 (1) The violation of s. 961.41 (1) or (1m) involves the distribution or  
4 delivery or the possession, with intent to distribute or deliver, of any controlled  
5 substance included in schedule I or II or a controlled substance analog of any

