

1999 DRAFTING REQUEST

Bill

Received: **01/28/99**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Huebsch (608) 266-0631**

By/Representing: **Bob**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - drugs**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Flunitrazepam

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	olsenje 02/13/99	ygeller 02/15/99	lpaasch 02/15/99	_____	gretskl 02/15/99	lrb_docadmin 02/17/99	
				_____		lrb_docadmin 02/17/99	

FE Sent For:

Not Needed

<END>

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1/?	olsenje	1/2/15 jlg	2/5/15 LP	2/15/15 LP HS			

FE Sent For:

<END>

LEGISLATIVE REFERENCE BUREAU**BILL REQUEST FORM**

Legal Section, 5th Floor, 100 N. Hamilton St.
 (608) 266-3561

2059

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
 Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: <i>1-28-99</i>	Legislator or agency requesting this draft: <i>HUEBSCIT</i>
Name/phone number of person submitting request:	
Persons to contact for questions about this draft (names and phone numbers please): <i>Bob Delaporte</i>	
Describe the problem, including any helpful examples. How do you want to solve the problem? <i>Please re-draft 97LRB-3586/2 for the current session</i>	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO
 If yes, anyone who asks? YES NO
 Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?
 YES NO If yes, please sign your name here:



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-3586/2
JEO:kaf:km

1997 BILL

1 **AN ACT to renumber** 961.14 (5) (a) and 961.20 (2) (ej); and **to amend** 961.492 (1)
2 of the statutes; **relating to:** the controlled substance flunitrazepam.

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 by law or the controlled substances board by rule 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 penalty for unlawful possession of a schedule IV controlled substance is a fine of not more than \$500 or imprisonment for not more than 30 days or both. The penalty for unlawful manufacture, distribution or delivery of a schedule IV controlled substance, or for unlawful possession of a schedule IV controlled substance with intent to manufacture, distribute or deliver, is a fine of not more than \$10,000 or imprisonment for not more than 3 years or both.

The controlled substance flunitrazepam (a depressant) is currently placed in schedule IV. 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:

BILL

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 5 years or both. (Placement of flunitrazepam into schedule I does not change the penalty for the unlawful possession of flunitrazepam.)

2. Certain minimum sentences 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 3 year sentence of imprisonment. However, the bill provides that the penalty enhancer for delivering or possessing with intent to 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.)

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

1 **SECTION 1.** 961.14 (5) (a) of the statutes is renumbered 961.14 (5) (am).

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

3 **SECTION 3.** 961.492 (1) of the statutes is amended to read:

4 961.492 (1) The violation of s. 961.41 (1) or (1m) involves the distribution or
5 delivery or the possession, with intent to distribute or deliver, of any controlled
6 substance included in schedule I or II or a controlled substance analog of any
7 controlled substance included in schedule I or II, other than a controlled substance
8 specified in s. 961.14 (5) (af) or a controlled substance analog of a controlled
9 substance specified in s. 961.14 (5) (af).

10

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2059/1

JEO: a:...

D Note

JLg

1999 BILL

gen cat

1 AN ACT ...; relating to: the controlled substance flunitrazepam.

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:

1. The maximum penalty for unlawful manufacture, distribution or delivery of flunitrazepam and for unlawful possession of flunitrazepam with intent to

BILL

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.

⊖
↑
hyphen

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 ^{seven} delivers, distributes, imports, sells or transfers^s 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.

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
- 6 controlled substance included in schedule I or II, other than a controlled substance

BILL

1 specified in s. 961.14 (5) (af) ✓ or a controlled substance analog of a controlled
2 substance specified in s. 961.14 (5) (af). ✓

3 History: 1995 a. 448 s. 249.

(END) ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2059/1dn

JEO: A:....

JEO

Flunitrazepam has a currently accepted medical use and may be prescribed and lawfully used in Wisconsin. To the extent that flunitrazepam is being prescribed and used in this state, placing the drug into schedule I may invalidate those prescriptions and prevent prescription and use of the drug because federal law prohibits practitioners from prescribing schedule I drugs. I am not positive that this draft will invalidate the prescription and use of flunitrazepam because the drug is still listed in schedule IV under federal law.

Also, as noted in the analysis of the draft, rescheduling flunitrazepam to schedule I has the result of increasing the penalties for certain acts concerning flunitrazepam. Otherwise, the draft treats the drug as it is treated under current law.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2059/1dn
JEO;jlg:lp

February 15, 1999

Flunitrazepam has a currently accepted medical use and may be prescribed and lawfully used in Wisconsin. To the extent that flunitrazepam is being prescribed and used in this state, placing the drug into schedule I may invalidate those prescriptions and prevent prescription and use of the drug because federal law prohibits practitioners from prescribing schedule I drugs. I am not positive that this draft will invalidate the prescription and use of flunitrazepam because the drug is still listed in schedule IV under federal law.

Also, as noted in the analysis of the draft, rescheduling flunitrazepam to schedule I has the result of increasing the penalties for certain acts concerning flunitrazepam. Otherwise, the draft treats the drug as it is treated under current law.

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E-mail: Jefren.Olsen@legis.state.wi.us

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 2/15/99

To: Representative Huebsch

Relating to LRB drafting number: LRB-2059

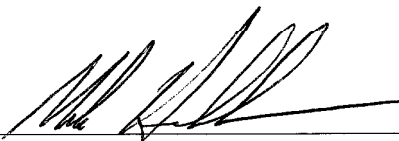
Topic

Flunitrazepam

Subject(s)

Criminal Law - drugs

1. **JACKET** the draft for introduction _____



in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906