

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 185**

May 11, 1999 – Offered by COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY.

1 **AN ACT to amend** 139.87 (2), 139.89, 139.95 (1), 139.95 (2), 139.95 (3), 938.34
2 (14t), 940.02 (2) (a) (intro.), 940.02 (2) (a) 3., 940.02 (2) (b), 961.41 (1) (i), 961.41
3 (1) (im), 961.41 (1m) (i), 961.41 (1m) (im), 961.41 (2) (c), 961.41 (2) (cm), 961.46
4 (3), 961.49 (2) (a) (intro.), 961.492 (1) and 961.495; **to repeal and recreate**
5 139.95 (2), 139.95 (3), 961.41 (1) (i), 961.41 (1m) (i) and 961.41 (2) (c); and **to**
6 **create** 139.88 (3), 961.41 (1) (im), 961.41 (1m) (im), 961.41 (2) (cm) and 961.55
7 (6m) of the statutes; **relating to:** the controlled substance flunitrazepam and
8 providing penalties.

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

9 **SECTION 1.** 139.87 (2) of the statutes is amended to read:
10 139.87 (2) “Dealer” means a person who in violation of ch. 961 possesses,
11 manufactures, produces, ships, transports, delivers, distributes, imports, sells or
12 transfers to another person more than 42.5 grams of material containing

1 tetrahydrocannabinols, more than 5 plants containing tetrahydrocannabinols, more
2 than 14 grams of mushrooms containing psilocin or psilocybin, more than 100
3 milligrams of any material containing lysergic acid diethylamide or, more than 7
4 grams of any other schedule I or schedule II controlled substance or of a controlled
5 substance analog of a schedule I or schedule II controlled substance or more than 7
6 grams of flunitrazepam. “Dealer” does not include a person who lawfully possesses
7 a controlled substance or controlled substance analog.

8 **SECTION 2.** 139.88 (3) of the statutes is created to read:

9 139.88 (3) Per gram or part of a gram of flunitrazepam, whether pure or
10 impure, measured when in the dealer’s possession, \$200.

11 **SECTION 3.** 139.89 of the statutes is amended to read:

12 **139.89 Proof of payment.** The department shall create a uniform system of
13 providing, affixing and displaying stamps, labels or other evidence that the tax under
14 s. 139.88 has been paid. Stamps or other evidence of payment shall be sold at face
15 value. No dealer may possess any schedule I controlled substance or, schedule II
16 controlled substance or flunitrazepam unless the tax under s. 139.88 has been paid
17 on it, as evidenced by a stamp or other official evidence issued by the department.
18 The tax under this subchapter is due and payable immediately upon acquisition or
19 possessing of the schedule I controlled substance or, schedule II controlled substance
20 or flunitrazepam in this state, and the department at that time has a lien on all of
21 the taxpayer’s property. Late payments are subject to interest at the rate of 1% per
22 month or part of a month. No person may transfer to another person a stamp or other
23 evidence of payment.

24 **SECTION 4.** 139.95 (1) of the statutes is amended to read:

1 139.95 (1) Any dealer who possesses a schedule I controlled substance ~~or~~, a
2 schedule II controlled substance or flunitrazepam that does not bear evidence that
3 the tax under s. 139.88 has been paid shall pay, in addition to the tax under s. 139.88,
4 a penalty equal to the tax due. The department shall collect penalties under this
5 subchapter in the same manner as it collects the tax under this subchapter.

6 **SECTION 5.** 139.95 (2) of the statutes is amended to read:

7 139.95 (2) A dealer who possesses a schedule I controlled substance ~~or~~, a
8 schedule II controlled substance or flunitrazepam that does not bear evidence that
9 the tax under s. 139.88 has been paid may be fined not more than \$10,000 or
10 imprisoned for not more than 5 years or both.

11 **SECTION 6.** 139.95 (2) of the statutes, as affected by 1997 Wisconsin Act 283 and
12 1999 Wisconsin Act (this act), is repealed and recreated to read:

13 139.95 (2) A dealer who possesses a schedule I controlled substance, a schedule
14 II controlled substance or flunitrazepam that does not bear evidence that the tax
15 under s. 139.88 has been paid may be fined not more than \$10,000 or imprisoned for
16 not more than 7 years and 6 months or both.

17 **SECTION 7.** 139.95 (3) of the statutes is amended to read:

18 139.95 (3) Any person who falsely or fraudulently makes, alters or counterfeits
19 any stamp or procures or causes the same to be done or who knowingly utters,
20 publishes, passes or tenders as true any false, altered or counterfeit stamp or who
21 affixes a counterfeit stamp to a schedule I controlled substance ~~or~~, a schedule II
22 controlled substance or flunitrazepam or who possesses a schedule I controlled
23 substance ~~or~~, a schedule II controlled substance or flunitrazepam to which a false,
24 altered or counterfeit stamp is affixed may be fined not more than \$10,000 or
25 imprisoned for not less than one year nor more than 10 years or both.

1 **SECTION 8.** 139.95 (3) of the statutes, as affected by 1997 Wisconsin Act 283 and
2 1999 Wisconsin Act (this act), is repealed and recreated to read:

3 139.95 (3) Any person who falsely or fraudulently makes, alters or counterfeits
4 any stamp or procures or causes the same to be done or who knowingly utters,
5 publishes, passes or tenders as true any false, altered or counterfeit stamp or who
6 affixes a counterfeit stamp to a schedule I controlled substance, a schedule II
7 controlled substance or flunitrazepam or who possesses a schedule I controlled
8 substance, a schedule II controlled substance or flunitrazepam to which a false,
9 altered or counterfeit stamp is affixed may be fined not more than \$10,000 or
10 imprisoned for not less than one year nor more than 15 years or both.

11 **SECTION 9.** 938.34 (14t) of the statutes is amended to read:

12 **938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE**
13 **ANALOG ON OR NEAR CERTAIN PREMISES.** If the juvenile is adjudicated delinquent under
14 a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled
15 substance included in schedule I or II under ch. 961 ~~or~~, a controlled substance analog
16 of a controlled substance included in schedule I or II under ch. 961 or flunitrazepam
17 while in or on the premises of a scattered-site public housing project, as defined in
18 s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state, county, city,
19 village or town park, a jail or correctional facility, as defined in s. 961.01 (12m), a
20 multiunit public housing project, as defined in s. 961.01 (14m), a swimming pool open
21 to members of the public, a youth center, as defined in s. 961.01 (22), or a community
22 center, while in or on or otherwise within 1,000 feet of any private or public school
23 premises or while in or on or otherwise within 1,000 feet of a school bus, as defined
24 in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours
25 in a supervised work program or other community service work under sub. (5g).

1 **SECTION 10.** 940.02 (2) (a) (intro.) of the statutes is amended to read:

2 940.02 **(2)** (a) (intro.) By manufacture, distribution or delivery, in violation of
3 s. 961.41, of a controlled substance included in schedule I or II under ch. 961 ~~or~~ of
4 a controlled substance analog of a controlled substance included in schedule I or II
5 under ch. 961 or of flunitrazepam, if another human being uses the controlled
6 substance or controlled substance analog and dies as a result of that use. This
7 paragraph applies:

8 **SECTION 11.** 940.02 (2) (a) 3. of the statutes is amended to read:

9 940.02 **(2)** (a) 3. To any distribution or delivery described in this paragraph,
10 regardless of whether the distribution or delivery is made directly to the human
11 being who dies. If possession of the controlled substance included in schedule I or
12 II under ch. 961 ~~or~~ of the controlled substance analog of the controlled substance
13 included in schedule I or II under ch. 961 or of the flunitrazepam is transferred more
14 than once prior to the death as described in this paragraph, each person who
15 distributes or delivers the controlled substance or controlled substance analog in
16 violation of s. 961.41 is guilty under this paragraph.

17 **SECTION 12.** 940.02 (2) (b) of the statutes is amended to read:

18 940.02 **(2)** (b) By administering or assisting in administering a controlled
19 substance included in schedule I or II under ch. 961 ~~or~~, a controlled substance analog
20 of a controlled substance included in schedule I or II of ch. 961 or flunitrazepam,
21 without lawful authority to do so, to another human being and that human being dies
22 as a result of the use of the substance. This paragraph applies whether the human
23 being dies as a result of using the controlled substance or controlled substance analog
24 by itself or with any compound, mixture, diluent or other substance mixed or
25 combined with the controlled substance or controlled substance analog.

1 **SECTION 13.** 961.41 (1) (i) of the statutes is amended to read:

2 961.41 (1) (i) ~~–A– Except as provided in par. (im),~~ a substance included in
3 schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 3
4 years or both.

5 **SECTION 14.** 961.41 (1) (i) of the statutes, as affected by 1997 Wisconsin Act 283
6 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

7 961.41 (1) (i) Except as provided in par. (im), a substance included in schedule
8 IV, may be fined not more than \$10,000 or imprisoned for not more than 4 years and
9 6 months or both.

10 **SECTION 15.** 961.41 (1) (im) of the statutes is created to read:

11 961.41 (1) (im) Flunitrazepam, may be fined not more than \$15,000 or
12 imprisoned for not more than 5 years or both.

13 **SECTION 16.** 961.41 (1) (im) of the statutes, as created by 1999 Wisconsin Act
14 (this act), is amended to read:

15 961.41 (1) (im) Flunitrazepam, may be fined not more than \$15,000 or
16 imprisoned for not more than ~~5~~ 7 years and 6 months or both.

17 **SECTION 17.** 961.41 (1m) (i) of the statutes is amended to read:

18 961.41 (1m) (i) ~~–A– Except as provided in par. (im),~~ a substance included in
19 schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 3
20 years or both.

21 **SECTION 18.** 961.41 (1m) (i) of the statutes, as affected by 1997 Wisconsin Act
22 283 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

23 961.41 (1m) (i) Except as provided in par. (im), a substance included in
24 schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 4
25 years and 6 months or both.

1 **SECTION 19.** 961.41 (1m) (im) of the statutes is created to read:

2 961.41 **(1m)** (im) Flunitrazepam, may be fined not more than \$15,000 or
3 imprisoned for not more than 5 years or both.

4 **SECTION 20.** 961.41 (1m) (im) of the statutes, as created by 1999 Wisconsin Act
5 (this act), is amended to read:

6 961.41 **(1m)** (im) Flunitrazepam, may be fined not more than \$15,000 or
7 imprisoned for not more than ~~5~~ 7 years and 6 months or both.

8 **SECTION 21.** 961.41 (2) (c) of the statutes is amended to read:

9 961.41 **(2)** (c) ~~A~~ Except as provided in par. (cm), a counterfeit substance
10 included in schedule IV, may be fined not more than \$10,000 or imprisoned for not
11 more than 3 years or both.

12 **SECTION 22.** 961.41 (2) (c) of the statutes, as affected by 1997 Wisconsin Act 283
13 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

14 961.41 **(2)** (c) Except as provided in par. (cm), a counterfeit substance included
15 in schedule IV, may be fined not more than \$10,000 or imprisoned for not more than
16 4 years and 6 months or both.

17 **SECTION 23.** 961.41 (2) (cm) of the statutes is created to read:

18 961.41 **(2)** (cm) A counterfeit substance which is flunitrazepam, may be fined
19 not more than \$15,000 or imprisoned for not more than 5 years or both.

20 **SECTION 24.** 961.41 (2) (cm) of the statutes, as created by 1999 Wisconsin Act
21 (this act), is amended to read:

22 961.41 **(2)** (cm) A counterfeit substance which is flunitrazepam, may be fined
23 not more than \$15,000 or imprisoned for not more than ~~5~~ 7 years and 6 months or
24 both.

25 **SECTION 25.** 961.46 (3) of the statutes is amended to read:

1 961.46 (3) If any person 17 years of age or over violates s. 961.41 (1) (cm), (d),
2 (e), (f), (g) ~~or~~ (h) or (im) by distributing or delivering cocaine, cocaine base, heroin,
3 phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine,
4 methamphetamine, methcathinone, flunitrazepam or any form of
5 tetrahydrocannabinols or a controlled substance analog of any of these substances
6 to a person 17 years of age or under who is at least 3 years his or her junior, any
7 applicable minimum and maximum fines and minimum and maximum periods of
8 imprisonment under s. 961.41 (1) (cm), (d), (e), (f), (g) ~~or~~ (h) or (im) are doubled.

9 **SECTION 26.** 961.49 (2) (a) (intro.) of the statutes is amended to read:

10 961.49 (2) (a) (intro.) Except as provided in par. (b), the court shall sentence a
11 person as provided in par. (am) if the person violates s. 961.41 (1) by delivering or
12 distributing, or violates s. 961.41 (1m) by possessing with intent to deliver or
13 distribute, a controlled substance included in schedule I or II ~~or~~ a controlled
14 substance analog of a controlled substance included in schedule I or II or
15 flunitrazepam under any of the following circumstances:

16 **SECTION 27.** 961.492 (1) of the statutes is amended to read:

17 961.492 (1) The violation of s. 961.41 (1) or (1m) involves the distribution or
18 delivery or the possession, with intent to distribute or deliver, of any controlled
19 substance included in schedule I or II ~~or~~ of a controlled substance analog of any
20 controlled substance included in schedule I or II or of flunitrazepam.

21 **SECTION 28.** 961.495 of the statutes is amended to read:

22 **961.495 Possession or attempted possession of a controlled substance**
23 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or
24 attempting to possess a controlled substance included in schedule I or II ~~or~~ a
25 controlled substance analog of a controlled substance included in schedule I or II or

1 flunitrazepam while in or on the premises of a scattered-site public housing project,
2 while in or on or otherwise within 1,000 feet of a state, county, city, village or town
3 park, a jail or correctional facility, a multiunit public housing project, a swimming
4 pool open to members of the public, a youth center or a community center, while in
5 or on or otherwise within 1,000 feet of any private or public school premises or while
6 in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56),
7 the court shall, in addition to any other penalties that may apply to the crime, impose
8 100 hours of community service work for a public agency or a nonprofit charitable
9 organization. The court shall ensure that the defendant is provided a written
10 statement of the terms of the community service order and that the community
11 service order is monitored. Any organization or agency acting in good faith to which
12 a defendant is assigned pursuant to an order under this section has immunity from
13 any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
14 defendant.

15 **SECTION 29.** 961.55 (6m) of the statutes is created to read:

16 961.55 **(6m)** Flunitrazepam that is possessed, transferred, sold, offered for sale
17 or attempted to be possessed in violation of this chapter is contraband and shall be
18 seized and summarily forfeited to the state. Flunitrazepam that is seized or comes
19 into the possession of the state, the owner of which is unknown, is contraband and
20 shall be summarily forfeited to the state.

21 **SECTION 30. Initial applicability.**

22 (1) The treatment of sections 139.87 (2), 139.88 (3), 938.34 (14t) and 961.55
23 (6m) of the statutes first applies to acts in violation of chapter 961 of the statutes that
24 occur on the effective date of this subsection.

