



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0096/2
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ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 183

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1 AN ACT *to renumber* 961.437, 961.49, 961.61 and 961.62; *to amend* 101.10
2 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m)
3 (d), 961.11 (6) (a), 961.22 (3) (title), 961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4),
4 961.23 (5) and 961.49 (title); and *to create* 101.10 (3) (f), 111.335 (1) (cs) 5.,
5 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m.,
6 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (11t), 961.01 (12t), 961.01 (20c),
7 961.01 (20e), 961.22 (2m), 961.23 (6), 961.23 (8), 961.235, 961.41 (3j), 961.452,
8 961.453, 961.49 (2m), 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the
9 statutes; **relating to:** pseudoephedrine and other materials used to produce
10 methamphetamine and providing penalties.

and rules regarding
the storage of drugs and drug
products

Analysis by the Legislative Reference Bureau

This substitute amendment makes a number of changes in the law relating to pseudoephedrine and other materials used to make the controlled substance methamphetamine.

Classification of pseudoephedrine products as controlled substances

Under current law, each controlled substance is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for being abused; and 3) the nature of the psychological or physical dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in schedule V. (Methamphetamine is included in schedule II.)

In general, a schedule I controlled substance may not be dispensed, even with a prescription. A schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. A schedule V controlled substance may be dispensed without a prescription, but only a registered pharmacist may sell it at retail and only then, in most cases, in certain specified amounts. In addition, the pharmacist must record the name and address of the purchaser of a schedule V controlled substance and the quantity of the product sold.

Penalties for crimes relating to schedule I and II controlled substances are, in general, more severe than those relating to other controlled substances. Penalties for crimes relating to schedule V controlled substances are generally the least severe. To illustrate, unlawful delivery of heroin (a schedule I controlled substance) is a Class C, D, E, or F felony, depending on the amount of the drug involved, while unlawful delivery of any schedule V controlled substance is a Class I felony, regardless of the amount involved.

Under this substitute amendment, pseudoephedrine products are classified as schedule V controlled substances. The substitute amendment defines a "pseudoephedrine product" as any product containing pseudoephedrine unless: 1) the Controlled Substances Board^(CSB) has determined that the product cannot be used readily in the manufacture of methamphetamine; or 2) the pseudoephedrine is in a liquid or in a soft, liquid-filled gelatin capsule, but not if the ~~Controlled Substances Board~~^(CSB) has determined that the liquid or gelatin capsule can be used readily in the manufacture of methamphetamine.

The substitute amendment also establishes a number of restrictions on the sale of pseudoephedrine products in conjunction with its classification as a schedule V controlled substance. First, no person may purchase more than seven and a half grams of a pseudoephedrine product within a 30-day period (the "quantity restriction"). Second, a person purchasing a pseudoephedrine product must present a photo ID at the time of the purchase. Third, a pharmacist must sign a record of the sale. Fourth, pharmacists must maintain records relating to sales of pseudoephedrine products for at least two years in an electronic or paper format. The records, however, are to be made available only to a pharmacist or a law enforcement officer. Fifth, the substitute amendment prohibits a person from purchasing or selling a pseudoephedrine product if the purchaser is under 18 (the "age restriction"). At the same time, the substitute amendment also creates an exception to the requirement that all retail sales of schedule V controlled substances be made by a

registered pharmacist. Under the exception, a person working under the direction of a registered pharmacist may sell pseudoephedrine products.

As noted above, the unlawful delivery of any schedule V controlled substance is a Class I felony. (See the table near the end of this analysis for the penalties that apply to felonies created in this substitute amendment.) This would include a sale of a pseudoephedrine product in violation of any of the restrictions established under current law or under the substitute amendment. But a person has a defense to such a prosecution involving a pseudoephedrine product if the person did not knowingly or recklessly violate the applicable restriction and either: 1) he or she reports it to a law enforcement officer within 30 days thereafter; or 2) the violation stemmed from the conduct of one or his or her employees, but only if the person had provided training to the employee regarding those restrictions. The substitute amendment also provides a defense to a prosecution based on a violation of the quantity restriction for pseudoephedrine products if: 1) the purchaser presented a fake ID that an ordinary and prudent person would think was legitimate; and 2) the sale was made in good faith, in reasonable reliance on the ID card and the appearance of the purchaser, and with the belief that the ID card contained the purchaser's true name and address. In addition, the substitute amendment provides a defense to a prosecution based on a violation of the age restriction for pseudoephedrine products if: 1) the purchaser presented an ID card indicating that he or she was 18 or over; 2) an ordinary and prudent person would believe that the purchaser, based on his or her appearance, was 18 or over; and 3) the sale was made in good faith, in reasonable reliance on the ID card and the appearance of the purchaser, and with the belief that the purchaser was 18 or over. If a person raises one of these defenses, he or she must prove each element by a preponderance of the evidence.

The substitute amendment ~~also~~ creates three new crimes related to pseudoephedrine products. First, the substitute amendment prohibits a person from purchasing more than seven and a half grams of a pseudoephedrine product within a 30-day period, other than by purchasing it in person from a pharmacy or pharmacist. A person who violates this prohibition is guilty of a Class I felony. This prohibition does not apply to purchases by a physician, dentist, veterinarian, or pharmacist or to purchases that are authorized by a physician, dentist, or veterinarian. Second, the substitute amendment prohibits purchases of pseudoephedrine products made to enable a person to avoid the quantity restriction. A person who knowingly uses another person to do so is guilty of a Class I felony, unless he or she uses an individual who is under 18 to do so. In that case, the person is guilty of a Class H felony. Third, the substitute amendment prohibits a person from purchasing a pseudoephedrine product on behalf of another person with intent to facilitate another person's manufacture of methamphetamine. A person who violates this prohibition is guilty of a Class I felony.

Possession of methamphetamine precursors

Current law generally prohibits possessing or disposing of waste resulting from the manufacture of methamphetamine. This prohibition does not apply to legitimate storage, treatment, or clean-up operations. A violation of this prohibition is a Class F felony. Second and subsequent offenses are Class H felonies.

Subhead → Additional crimes relating to pseudoephedrine purchases

Current law also prohibits possessing or attempting to possess methamphetamine itself. A violation of that prohibition is a Class I felony. In addition, current law prohibits manufacturing, distributing, and delivering methamphetamine and possessing methamphetamine with intent to manufacture, distribute, or deliver. A violation of one of these prohibitions is a Class C, D, E, or F felony, depending on the amount of the drug involved.

This substitute amendment prohibits possessing a variety of materials with intent to manufacture methamphetamine. A person who violates this prohibition is guilty of a Class H felony. The materials that are covered by this prohibition are pseudoephedrine products, products containing ephedrine (a schedule IV controlled substance), phenylpropanolamine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, and pressurized ammonia. Possession of more than nine grams of pseudoephedrine or ephedrine creates a rebuttable presumption of the person's intent to manufacture methamphetamine.

In general, a person who is convicted of possessing the materials listed above with intent to manufacture methamphetamine is subject to the same disqualifications, disabilities, increased penalties, and other adverse or unfavorable treatments as a person who is convicted of possessing a controlled substance with intent to manufacture, distribute, or deliver ("possession with intent" crimes). For example, like possession with intent crimes, this new offense is classified as a "three-strikes" crime, which means that a person who is convicted of this crime and two other offenses that are covered by the three-strikes statute is sentenced, upon conviction for the last of those three offenses, to life imprisonment without the possibility of parole or extended supervision.

Agricultural chemicals used to make methamphetamine

Current law prohibits the theft of anhydrous ammonia or equipment used to apply anhydrous ammonia for an agricultural purpose or to store, hold, transport, or transfer anhydrous ammonia (anhydrous ammonia equipment). Current law also contains other prohibitions regarding storing, holding, transporting, and transferring anhydrous ammonia. A person who violates one of these prohibitions is guilty of a Class I felony (unless the violation occurs during agricultural activity or while the person is working on anhydrous ammonia equipment with its owner's consent, in which case the person is subject to a civil monetary penalty).

This substitute amendment prohibits a person from intentionally releasing another person's anhydrous ammonia without the other person's consent. A person who violates this prohibition is guilty of a Class I felony. The substitute amendment also specifies that attempted theft of anhydrous ammonia or anhydrous ammonia equipment is subject to the same penalties as those that apply to the completed offense. (With most other crimes, an attempt is punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

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Penalties

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class H felony	\$10,000	3 years	6 years
Class I felony	\$10,000	1.5 years	3.5 years

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

1 **SECTION 1.** 101.10 (title) of the statutes is amended to read:

2 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
3 **anhydrous ammonia and anhydrous ammonia equipment.**

4 **SECTION 2.** 101.10 (3) (f) of the statutes is created to read:

5 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
6 belonging to another into the atmosphere. This paragraph does not apply if the
7 owner has authorized the actor to exercise control over the anhydrous ammonia or
8 has consented to its release.

9 **SECTION 3.** 111.335 (1) (cs) 5. of the statutes is created to read:

10 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
11 to manufacture methamphetamine under that section or under a federal law or a law
12 of another state that is substantially similar to s. 961.65.

13 **SECTION 4.** 125.12 (2) (ag) 5m. of the statutes is created to read:

14 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
15 materials listed in s. 961.65 with intent to manufacture methamphetamine under
16 that subsection or under a federal law or a law of another state that is substantially
17 similar to s. 961.65.

18 **SECTION 5.** 125.12 (2) (ag) 6m. of the statutes is created to read:

1 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
2 premises for which the license under this chapter is issued, to possess any of the
3 materials listed in s. 961.65 with the intent to manufacture methamphetamine.

4 **SECTION 6.** 125.12 (4) (ag) 7m. of the statutes is created to read:

5 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
6 the materials listed in s. 961.65 with intent to manufacture methamphetamine
7 under that section or under a federal law or a law of another state that is
8 substantially similar to s. 961.65.

9 **SECTION 7.** 125.12 (4) (ag) 8m. of the statutes is created to read:

10 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
11 on the premises for which the license under this chapter is issued, to possess any of
12 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

13 **SECTION 8.** 895.555 (1) of the statutes is amended to read:

14 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
15 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
16 101.10 (1) (b), or who uses anhydrous ammonia for any legal purpose is immune from
17 any civil liability for acts or omissions relating to the anhydrous ammonia equipment
18 or to anhydrous ammonia that cause damage or injury to an individual, if that
19 damage or injury occurs during the individual's violation of s. 101.10 (3) (c), (d), or
20 (e), or (f).

21 **SECTION 9.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

22 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under
23 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65,
24 the court shall order one of the following penalties:

25 **SECTION 10.** 939.32 (1) (g) of the statutes is created to read:

1 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
2 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

3 **SECTION 11.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

4 939.62 (2m) (a) 2m. am. A crime under s. 961.65.

5 **SECTION 12.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

6 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
7 other state or, prior to April 28, 1994, under the law of this state that is comparable
8 to a crime specified in this subd. 2m. a., am., b., or c.

9 **SECTION 13.** 939.62 (2m) (d) of the statutes is amended to read:

10 939.62 (2m) (d) If a prior conviction is being considered as being covered under
11 par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
12 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.
13 (b) only if the court determines, beyond a reasonable doubt, that the violation
14 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
15 or 2m. a., am., b., or c. if committed by an adult in this state.

16 **SECTION 14.** 961.01 (11t) of the statutes is created to read:

17 961.01 (11t) “Ephedrine product” means any material, compound, mixture, or
18 preparation that contains any quantity of ephedrine or any of its salts, isomers, and
19 salts of isomers.

20 **SECTION 15.** 961.01 (12t) of the statutes is created to read:

21 961.01 (12t) “Liquid-filled pseudoephedrine gelcap” means a soft, liquid-filled
22 gelatin capsule that is intended to be sold at retail and that contains
23 pseudoephedrine or any of its salts, isomers, or salts of isomers.

24 **SECTION 16.** 961.01 (20c) of the statutes is created to read:

1 961.01 (20c) “Pseudoephedrine product” means a material, compound,
2 mixture, or preparation containing any quantity of pseudoephedrine or any of its
3 salts, isomers, or salts of isomers but does not include such a product if any of the
4 following applies:

5 (a) The product is a pseudoephedrine liquid or a liquid-filled pseudoephedrine
6 gelcap. This paragraph does not apply if the controlled substances board has
7 determined, by rule, that the product can be readily used in the manufacture of
8 methamphetamine.

9 (b) The controlled substances board has determined, by rule, that the product
10 cannot be readily used in the manufacture of methamphetamine.

11 **SECTION 17.** 961.01 (20e) of the statutes is created to read:

12 961.01 (20e) “Pseudoephedrine liquid” means a product that is intended to be
13 sold at retail, that is a liquid at room temperature, and that contains
14 pseudoephedrine or any of its salts, isomers, or salts of isomers.

15 **SECTION 18.** 961.11 (6) (a) of the statutes is amended to read:

16 961.11 (6) (a) The controlled substances board shall not have authority to
17 control a nonnarcotic substance if the substance may, under the federal food, drug
18 and cosmetic act and the laws of this state, be lawfully sold over the counter without
19 a prescription. This paragraph does not apply to the promulgation of rules by the
20 controlled substances board under s. 961.01 (20c).

21 **SECTION 19.** 961.22 (2m) of the statutes is created to read:

22 961.22 (2m) PSENDOPHEDRINE. Any pseudoephedrine product.

23 **SECTION 20.** 961.22 (3) (title) of the statutes is amended to read:

24 961.22 (3) (title) ~~STIMULANTS~~ OTHER STIMULANTS.

25 **SECTION 21.** 961.23 (1) of the statutes is amended to read:

1 961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a
2 medicine, and not for the purpose of evading this chapter.

3 **SECTION 22.** 961.23 (2) of the statutes is amended to read:

4 961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist
5 or, if the substance is a pseudoephedrine product, by a person who is working under
6 the direction of a registered pharmacist when sold in a retail establishment.

7 **SECTION 23.** 961.23 (3) of the statutes is amended to read:

8 961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the
9 name and address of the establishment on the immediate container of said
10 preparation.

11 **SECTION 24.** 961.23 (4) of the statutes is amended to read:

12 961.23 (4) ~~That any~~ Any person purchasing such a substance shall, at the time
13 of purchase, present to the seller that person's correct name and, address, and, if the
14 person is purchasing a pseudoephedrine product, an identification card containing
15 the person's photograph. The seller shall record the name and address and the name
16 and quantity of the product sold. The purchaser and either the seller or, if the
17 substance is a pseudoephedrine product and is being sold by a person who is not a
18 registered pharmacist, the pharmacist supervising the seller shall sign the record of
19 this transaction. The giving of a false name or false address by the purchaser shall
20 be prima facie evidence of a violation of s. 961.43 (1) (a).

21 **SECTION 25.** 961.23 (5) of the statutes is amended to read:

22 961.23 (5) ~~That no~~ No person may purchase more than 8 ounces of a product
23 containing opium or more than 4 ounces of a product containing any other schedule
24 V substance within a 48-hour period without the authorization of a physician,

1 dentist, or veterinarian ~~nor~~. This subsection does not apply to a pseudoephedrine
2 product unless it contains another schedule V substance.

3 (7) No person other than a physician, dentist, veterinarian, or pharmacist may
4 possess more than 8 ounces of a product containing opium or more than 4 ounces of
5 a product containing any other schedule V substance be in the possession of any
6 person other than a physician, dentist, veterinarian or pharmacist at any time
7 without the authorization of a physician, dentist, or veterinarian. This subsection
8 does not apply to a pseudoephedrine product unless it contains another schedule V
9 substance.

10 **SECTION 26.** 961.23 (6) of the statutes is created to read:

11 961.23 (6) No person other than a physician, dentist, veterinarian, or
12 pharmacist may purchase more than 7.5 grams of a pseudoephedrine product within
13 a 30-day period without the authorization of a physician, dentist, or veterinarian.

14 **SECTION 27.** 961.23 (8) of the statutes is created to read:

15 961.23 (8) No person may sell a pseudoephedrine product to a person under 18
16 years of age, and no person under 18 years of age may purchase a pseudoephedrine
17 product.

18 **SECTION 28.** 961.235 of the statutes is created to read:

19 **961.235 Records relating to sales of pseudoephedrine products.**

20 Records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine
21 product may be kept in either a paper or electronic format and shall be maintained
22 by the pharmacy for at least 2 years. Only a pharmacist or a law enforcement officer
23 may have access to information recorded under s. 961.23 (4) with respect to the sale
24 of a pseudoephedrine product.

25 **SECTION 29.** 961.41 (3j) of the statutes is created to read:

1 **961.41 (3j) PURCHASES OF PSEUDOEPHEDRINE PRODUCTS.** Whoever purchases
2 more than 7.5 grams of a pseudoephedrine product within a 30–day period, other
3 than by purchasing the product in person from a pharmacy or pharmacist, is guilty
4 of a Class I felony. This subsection does not apply to a purchase by a physician,
5 dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician,
6 dentist, or veterinarian.

7 **SECTION 30.** 961.437 of the statutes is renumbered 961.67.

8 **SECTION 31.** 961.452 of the statutes is created to read:

9 **961.452 Defenses in certain schedule V prosecutions.** (1) A person who
10 proves all of the following by a preponderance of the evidence has a defense to
11 prosecution under s. 961.41 (1) (j) that is based on the person’s violation of a condition
12 specified in s. 961.23 with respect to the person’s distribution or delivery of a
13 pseudoephedrine product:

14 (a) The person did not knowingly or recklessly violate the condition under s.
15 961.23.

16 (b) The person reported his or her own violation of the condition under s. 961.23
17 to a law enforcement officer in the county or municipality in which the violation
18 occurred within 30 days after the violation.

19 (2) A seller who proves all of the following by a preponderance of the evidence
20 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person’s
21 violation of a condition specified in s. 961.23 with respect to the person’s distribution
22 or delivery of a pseudoephedrine product:

23 (a) The person did not knowingly or recklessly violate the condition under s.
24 961.23.

1 (b) The acts or omissions constituting the violation of the condition under s.
2 961.23 were the acts or omissions of one or more of the person's employees.

3 (c) The person provided training to each of those employees regarding the
4 restrictions imposed under s. 961.23 on the delivery of pseudoephedrine products.

5 **(3)** A person who proves all of the following by a preponderance of the evidence
6 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):

7 (a) The purchaser presented an identification card that contained a name or
8 address other than the person's own.

9 (b) The appearance of the purchaser was such that an ordinary and prudent
10 person would believe that the purchaser was the person depicted in the photograph
11 contained in that identification card.

12 (c) The sale was made in good faith, in reasonable reliance on the identification
13 card and appearance of the purchaser, and with the belief that the name and address
14 of the purchaser were as listed on the identification card.

15 **(4)** A person who proves all of the following by a preponderance of the evidence
16 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):

17 (a) The purchaser presented an identification card that indicated that he or she
18 was 18 years of age or older.

19 (b) The appearance of the purchaser was such that an ordinary and prudent
20 person would believe that the purchaser was 18 years of age or older.

21 (c) The sale was made in good faith, in reasonable reliance on the identification
22 card and appearance of the purchaser, and with the belief that the purchaser was 18
23 years of age or older.

24 **SECTION 32.** 961.453 of the statutes is created to read:

1 **961.453 Purchases of pseudoephedrine products on behalf of another**
2 **person. (1)** (a) No person may, with the intent to acquire more than 7.5 grams of
3 a pseudoephedrine product within a 30–day period, knowingly solicit, hire, direct,
4 employ, or use another to purchase a pseudoephedrine product on his or her behalf.

5 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of
6 a Class I felony.

7 2. If the person who is solicited, hired, directed, employed, or used to purchase
8 the pseudoephedrine product is an individual who is less than 18 years of age, the
9 actor is guilty of a Class H felony.

10 **(2)** No person may purchase a pseudoephedrine product on behalf of another
11 with the intent to facilitate another person’s manufacture of methamphetamine. A
12 person who violates this subsection is guilty of a Class I felony.

13 **SECTION 33.** 961.49 (title) of the statutes is amended to read:

14 **961.49 (title) ~~Distribution of or possession with~~ Offenses involving**
15 **intent to deliver or distribute a controlled substance on or near certain**
16 **places.**

17 **SECTION 34.** 961.49 of the statutes is renumbered 961.49 (1m).

18 **SECTION 35.** 961.49 (2m) of the statutes is created to read:

19 **961.49 (2m)** If any person violates s. 961.65 and, during the violation, the
20 person intends to deliver or distribute methamphetamine or a controlled substance
21 analog of methamphetamine under any of the circumstances listed under sub. (1m)
22 (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by
23 5 years.

24 **SECTION 36.** 961.61 of the statutes is renumbered 961.003.

25 **SECTION 37.** 961.62 of the statutes is renumbered 961.005.

1 **SECTION 38.** 961.65 of the statutes is created to read:

2 **961.65 Possessing materials for manufacturing methamphetamine.**

3 Except as authorized by this chapter, any person who possesses an ephedrine or
4 pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine,
5 anhydrous ammonia, or pressurized ammonia with intent to manufacture
6 methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of
7 ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product
8 to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent
9 to manufacture methamphetamine. In this section, “ephedrine” and
10 “pseudoephedrine” include any of their salts, isomers, and salts of isomers.

11 **SECTION 39.** 973.017 (8) (a) 3. of the statutes is created to read:

12 973.017 (8) (a) 3. When making a sentencing decision concerning a person
13 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
14 fact that the person intended to deliver or distribute methamphetamine or a
15 controlled substance analog of methamphetamine to a prisoner within the precincts
16 of any prison, jail, or house of correction.

17 **SECTION 40.** 973.017 (8) (c) of the statutes is created to read:

18 973.017 (8) (c) When making a sentencing decision concerning a person
19 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
20 fact that the person intended to deliver or distribute methamphetamine or a
21 controlled substance analog of methamphetamine and that the person knowingly
22 used a public transit vehicle during the violation.

23 **SECTION 41. Effective dates.** This act takes effect on the day after publication,
24 except as follows:

1 **insert a**

Rules regarding storage of drugs and drug products

Under current law, the CSB[✓] must adopt rules setting minimum standards regarding manufacturing and distributing drugs. This substitute amendment prohibits the CSB from adopting rules that impose requirements regarding the storage of a drug or drug product in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless the product is a controlled substance under federal law.[✓]

2 **INSERT 6/12**

3 **SECTION ~~4~~** 450.07 (4) (b) of the statutes is amended to read:

4 450.07 (4) (b) The board shall adopt rules prescribing minimum standards for
5 manufacturing and distributing drugs. Rules adopted under this paragraph may not[✓]
6 impose requirements regarding the storage of a drug or drug product in a safe, a steel
7 cabinet, a vault, or any other secure storage compartment, area, room, or building
8 unless the product is a controlled substance under federal law.[✓]

History: 1985 a. 146; 1991 a. 39.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0096/3
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ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 183

Thurs

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1 AN ACT *to renumber* 961.437, 961.49, 961.61 and 961.62; *to amend* 101.10
2 (title), 450.07 (4) (b), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m.
3 d., 939.62 (2m) (d), 961.11 (6) (a), 961.22 (3) (title), 961.23 (1), 961.23 (2), 961.23
4 (3), 961.23 (4), 961.23 (5) and 961.49 (title); and *to create* 101.10 (3) (f), 111.335
5 (1) (cs) 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4)
6 (ag) 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (11t), 961.01 (12t),
7 961.01 (20c), 961.01 (20e), 961.22 (2m), 961.23 (6), 961.23 (8), 961.235, 961.41
8 (3j), 961.452, 961.453, 961.49 (2m), 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c)
9 of the statutes; **relating to:** pseudoephedrine and other materials used to

1 produce methamphetamine and rules regarding the storage of drugs and drug
2 products and providing penalties.

Analysis by the Legislative Reference Bureau

This substitute amendment makes a number of changes in the law relating to pseudoephedrine and other materials used to make the controlled substance methamphetamine.

Classification of pseudoephedrine products as controlled substances

Under current law, each controlled substance is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for being abused; and 3) the nature of the psychological or physical dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in schedule V. (Methamphetamine is included in schedule II.)

In general, a schedule I controlled substance may not be dispensed, even with a prescription. A schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. A schedule V controlled substance may be dispensed without a prescription, but only a registered pharmacist may sell it at retail and only then, in most cases, in certain specified amounts. In addition, the pharmacist must record the name and address of the purchaser of a schedule V controlled substance and the quantity of the product sold.

Penalties for crimes relating to schedule I and II controlled substances are, in general, more severe than those relating to other controlled substances. Penalties for crimes relating to schedule V controlled substances are generally the least severe. To illustrate, unlawful delivery of heroin (a schedule I controlled substance) is a Class C, D, E, or F felony, depending on the amount of the drug involved, while unlawful delivery of any schedule V controlled substance is a Class I felony, regardless of the amount involved.

Under this substitute amendment, pseudoephedrine products are classified as schedule V controlled substances. The substitute amendment defines a "pseudoephedrine product" as any product containing pseudoephedrine unless: 1) the Controlled Substances Board (CSB) has determined that the product cannot be used readily in the manufacture of methamphetamine; or 2) the pseudoephedrine is in a liquid or in a soft, liquid-filled gelatin capsule, but not if the CSB has determined that the liquid or gelatin capsule can be used readily in the manufacture of methamphetamine.

The substitute amendment also establishes a number of restrictions on the sale of pseudoephedrine products in conjunction with its classification as a schedule V controlled substance. First, no person may purchase more than seven and a half grams of a pseudoephedrine product within a 30-day period (the "quantity

restriction”). Second, a person purchasing a pseudoephedrine product must present a photo ID at the time of the purchase. Third, a pharmacist must sign a record of the sale. Fourth, pharmacists must maintain records relating to sales of pseudoephedrine products for at least two years in an electronic or paper format. The records, however, are to be made available only to a pharmacist or a law enforcement officer. Fifth, the substitute amendment prohibits a person from purchasing or selling a pseudoephedrine product if the purchaser is under 18 (the “age restriction”). At the same time, the substitute amendment also creates an exception to the requirement that all retail sales of schedule V controlled substances be made by a registered pharmacist. Under the exception, a person working under the direction of a registered pharmacist may sell pseudoephedrine products.

As noted above, the unlawful delivery of any schedule V controlled substance is a Class I felony. (See the table near the end of this analysis for the penalties that apply to felonies created in this substitute amendment.) This would include a sale of a pseudoephedrine product in violation of any of the restrictions established under current law or under the substitute amendment. But a person has a defense to such a prosecution involving a pseudoephedrine product if the person did not knowingly or recklessly violate the applicable restriction and either: 1) he or she reports it to a law enforcement officer within 30 days thereafter; or 2) the violation stemmed from the conduct of one or his or her employees, but only if the person had provided training to the employee regarding those restrictions. The substitute amendment also provides a defense to a prosecution based on a violation of the quantity restriction for pseudoephedrine products if: 1) the purchaser presented a fake ID that an ordinary and prudent person would think was legitimate; and 2) the sale was made in good faith, in reasonable reliance on the ID card and the appearance of the purchaser, and with the belief that the ID card contained the purchaser’s true name and address. In addition, the substitute amendment provides a defense to a prosecution based on a violation of the age restriction for pseudoephedrine products if: 1) the purchaser presented an ID card indicating that he or she was 18 or over; 2) an ordinary and prudent person would believe that the purchaser, based on his or her appearance, was 18 or over; and 3) the sale was made in good faith, in reasonable reliance on the ID card and the appearance of the purchaser, and with the belief that the purchaser was 18 or over. If a person raises one of these defenses, he or she must prove each element by a preponderance of the evidence.

Additional crimes relating to pseudoephedrine purchases

The substitute amendment creates three new crimes related to pseudoephedrine products. First, the substitute amendment prohibits a person from purchasing more than seven and a half grams of a pseudoephedrine product within a 30-day period, other than by purchasing it in person from a pharmacy or pharmacist. A person who violates this prohibition is guilty of a Class I felony. This prohibition does not apply to purchases by a physician, dentist, veterinarian, or pharmacist or to purchases that are authorized by a physician, dentist, or veterinarian. Second, the substitute amendment prohibits purchases of pseudoephedrine products made to enable a person to avoid the quantity restriction. A person who knowingly uses another person to do so is guilty of a Class I felony,

unless he or she uses an individual who is under 18 to do so. In that case, the person is guilty of a Class H felony. Third, the substitute amendment prohibits a person from purchasing a pseudoephedrine product on behalf of another person with intent to facilitate another person's manufacture of methamphetamine. A person who violates this prohibition is guilty of a Class I felony.

Possession of methamphetamine precursors

Current law generally prohibits possessing or disposing of waste resulting from the manufacture of methamphetamine. This prohibition does not apply to legitimate storage, treatment, or clean-up operations. A violation of this prohibition is a Class F felony. Second and subsequent offenses are Class H felonies.

Current law also prohibits possessing or attempting to possess methamphetamine itself. A violation of that prohibition is a Class I felony. In addition, current law prohibits manufacturing, distributing, and delivering methamphetamine and possessing methamphetamine with intent to manufacture, distribute, or deliver. A violation of one of these prohibitions is a Class C, D, E, or F felony, depending on the amount of the drug involved.

This substitute amendment prohibits possessing a variety of materials with intent to manufacture methamphetamine. A person who violates this prohibition is guilty of a Class H felony. The materials that are covered by this prohibition are pseudoephedrine products, products containing ephedrine (a schedule IV controlled substance), phenylpropanolamine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, and pressurized ammonia. Possession of more than nine grams of pseudoephedrine or ephedrine creates a rebuttable presumption of the person's intent to manufacture methamphetamine.

In general, a person who is convicted of possessing the materials listed above with intent to manufacture methamphetamine is subject to the same disqualifications, disabilities, increased penalties, and other adverse or unfavorable treatments as a person who is convicted of possessing a controlled substance with intent to manufacture, distribute, or deliver ("possession with intent" crimes). For example, like possession with intent crimes, this new offense is classified as a "three-strikes" crime, which means that a person who is convicted of this crime and two other offenses that are covered by the three-strikes statute is sentenced, upon conviction for the last of those three offenses, to life imprisonment without the possibility of parole or extended supervision.

Agricultural chemicals used to make methamphetamine

Current law prohibits the theft of anhydrous ammonia or equipment used to apply anhydrous ammonia for an agricultural purpose or to store, hold, transport, or transfer anhydrous ammonia (anhydrous ammonia equipment). Current law also contains other prohibitions regarding storing, holding, transporting, and transferring anhydrous ammonia. A person who violates one of these prohibitions is guilty of a Class I felony (unless the violation occurs during agricultural activity or while the person is working on anhydrous ammonia equipment with its owner's consent, in which case the person is subject to a civil monetary penalty).

This substitute amendment prohibits a person from intentionally releasing another person's anhydrous ammonia without the other person's consent. A person

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who violates this prohibition is guilty of a Class I felony. The substitute amendment also specifies that attempted theft of anhydrous ammonia or anhydrous ammonia equipment is subject to the same penalties as those that apply to the completed offense. (With most other crimes, an attempt is punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

Rules regarding storage of drugs and drug products

Under current law, the CSB must adopt rules setting minimum standards regarding manufacturing and distributing drugs. This substitute amendment prohibits the CSB from adopting rules that impose requirements regarding the storage of a drug or drug product in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless the product is a controlled substance under federal law.

Penalties

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class H felony	\$10,000	3 years	6 years
Class I felony	\$10,000	1.5 years	3.5 years

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

1 **SECTION 1.** 101.10 (title) of the statutes is amended to read:

2 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
3 **anhydrous ammonia and anhydrous ammonia equipment.**

4 **SECTION 2.** 101.10 (3) (f) of the statutes is created to read:

5 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
6 belonging to another into the atmosphere. This paragraph does not apply if the
7 owner has authorized the actor to exercise control over the anhydrous ammonia or
8 has consented to its release.

9 **SECTION 3.** 111.335 (1) (cs) 5. of the statutes is created to read:

10 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
11 to manufacture methamphetamine under that section or under a federal law or a law
12 of another state that is substantially similar to s. 961.65.

1 **SECTION 4.** 125.12 (2) (ag) 5m. of the statutes is created to read:

2 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
3 materials listed in s. 961.65 with intent to manufacture methamphetamine under
4 that subsection or under a federal law or a law of another state that is substantially
5 similar to s. 961.65.

6 **SECTION 5.** 125.12 (2) (ag) 6m. of the statutes is created to read:

7 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
8 premises for which the license under this chapter is issued, to possess any of the
9 materials listed in s. 961.65 with the intent to manufacture methamphetamine.

10 **SECTION 6.** 125.12 (4) (ag) 7m. of the statutes is created to read:

11 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
12 the materials listed in s. 961.65 with intent to manufacture methamphetamine
13 under that section or under a federal law or a law of another state that is
14 substantially similar to s. 961.65.

15 **SECTION 7.** 125.12 (4) (ag) 8m. of the statutes is created to read:

16 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
17 on the premises for which the license under this chapter is issued, to possess any of
18 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

19 **SECTION 8.** 450.07 (4) (b) of the statutes is amended to read:

20 450.07 (4) (b) The board shall adopt rules prescribing minimum standards for
21 manufacturing and distributing drugs. Rules adopted under this paragraph may not
22 impose requirements regarding the storage of a drug or drug product in a safe, a steel
23 cabinet, a vault, or any other secure storage compartment, area, room, or building
24 unless the product is a controlled substance under federal law.

25 **SECTION 9.** 895.555 (1) of the statutes is amended to read:

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1 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
2 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
3 101.10 (1) (b), or who uses anhydrous ammonia for any legal purpose is immune from
4 any civil liability for acts or omissions relating to the anhydrous ammonia equipment
5 or to anhydrous ammonia that cause damage or injury to an individual, if that
6 damage or injury occurs during the individual's violation of s. 101.10 (3) (c), (d), ~~or~~
7 (e), or (f).

8 **SECTION 10.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

9 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under
10 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65,
11 the court shall order one of the following penalties:

12 **SECTION 11.** 939.32 (1) (g) of the statutes is created to read:

13 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
14 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

15 **SECTION 12.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

16 939.62 (2m) (a) 2m. am. A crime under s. 961.65.

17 **SECTION 13.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

18 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
19 other state or, prior to April 28, 1994, under the law of this state that is comparable
20 to a crime specified in this subd. 2m. a., am., b., or c.

21 **SECTION 14.** 939.62 (2m) (d) of the statutes is amended to read:

22 939.62 (2m) (d) If a prior conviction is being considered as being covered under
23 par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
24 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.
25 (b) only if the court determines, beyond a reasonable doubt, that the violation

1 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
2 or 2m. a., am., b., or c. if committed by an adult in this state.

3 **SECTION 15.** 961.01 (11t) of the statutes is created to read:

4 961.01 (11t) “Ephedrine product” means any material, compound, mixture, or
5 preparation that contains any quantity of ephedrine or any of its salts, isomers, and
6 salts of isomers.

7 **SECTION 16.** 961.01 (12t) of the statutes is created to read:

8 961.01 (12t) “Liquid-filled pseudoephedrine gelcap” means a soft, liquid-filled
9 gelatin capsule that is intended to be sold at retail and that contains
10 pseudoephedrine or any of its salts, isomers, or salts of isomers.

11 **SECTION 17.** 961.01 (20c) of the statutes is created to read:

12 961.01 (20c) “Pseudoephedrine product” means a material, compound,
13 mixture, or preparation containing any quantity of pseudoephedrine or any of its
14 salts, isomers, or salts of isomers but does not include such a product if any of the
15 following applies:

16 (a) The product is a pseudoephedrine liquid or a liquid-filled pseudoephedrine
17 gelcap. This paragraph does not apply if the controlled substances board has
18 determined, by rule, that the product can be readily used in the manufacture of
19 methamphetamine.

20 (b) The controlled substances board has determined, by rule, that the product
21 cannot be readily used in the manufacture of methamphetamine.

22 **SECTION 18.** 961.01 (20e) of the statutes is created to read:

23 961.01 (20e) “Pseudoephedrine liquid” means a product that is intended to be
24 sold at retail, that is a liquid at room temperature, and that contains
25 pseudoephedrine or any of its salts, isomers, or salts of isomers.

1 **SECTION 19.** 961.11 (6) (a) of the statutes is amended to read:

2 961.11 (6) (a) The controlled substances board shall not have authority to
3 control a nonnarcotic substance if the substance may, under the federal food, drug
4 and cosmetic act and the laws of this state, be lawfully sold over the counter without
5 a prescription. This paragraph does not apply to the promulgation of rules by the
6 controlled substances board under s. 961.01 (20c).

7 **SECTION 20.** 961.22 (2m) of the statutes is created to read:

8 961.22 (2m) PSEUDOEPHEDRINE. Any pseudoephedrine product.

9 **SECTION 21.** 961.22 (3) (title) of the statutes is amended to read:

10 961.22 (3) (title) ~~STIMULANTS~~ OTHER STIMULANTS.

11 **SECTION 22.** 961.23 (1) of the statutes is amended to read:

12 961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a
13 medicine, and not for the purpose of evading this chapter.

14 **SECTION 23.** 961.23 (2) of the statutes is amended to read:

15 961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist
16 or, if the substance is a pseudoephedrine product, by a person who is working under
17 the direction of a registered pharmacist when sold in a retail establishment.

18 **SECTION 24.** 961.23 (3) of the statutes is amended to read:

19 961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the
20 name and address of the establishment on the immediate container of said
21 preparation.

22 **SECTION 25.** 961.23 (4) of the statutes is amended to read:

23 961.23 (4) ~~That any~~ Any person purchasing such a substance shall, at the time
24 of purchase, present to the seller that person's correct name and, address, and, if the
25 person is purchasing a pseudoephedrine product, an identification card containing

1 the person's photograph. The seller shall record the name and address and the name
2 and quantity of the product sold. The purchaser and either the seller or, if the
3 substance is a pseudoephedrine product and is being sold by a person who is not a
4 registered pharmacist, the pharmacist supervising the seller shall sign the record of
5 this transaction. The giving of a false name or false address by the purchaser shall
6 be prima facie evidence of a violation of s. 961.43 (1) (a).

7 **SECTION 26.** 961.23 (5) of the statutes is amended to read:

8 961.23 (5) ~~That no~~ No person may purchase more than 8 ounces of a product
9 containing opium or more than 4 ounces of a product containing any other schedule
10 V substance within a 48-hour period without the authorization of a physician,
11 dentist, or veterinarian ~~nor.~~ This subsection does not apply to a pseudoephedrine
12 product unless it contains another schedule V substance.

13 (7) No person other than a physician, dentist, veterinarian, or pharmacist may
14 possess more than 8 ounces of a product containing opium or more than 4 ounces of
15 a product containing any other schedule V substance ~~be in the possession of any~~
16 ~~person other than a physician, dentist, veterinarian or pharmacist~~ at any time
17 without the authorization of a physician, dentist, or veterinarian. This subsection
18 does not apply to a pseudoephedrine product unless it contains another schedule V
19 substance.

20 **SECTION 27.** 961.23 (6) of the statutes is created to read:

21 961.23 (6) No person other than a physician, dentist, veterinarian, or
22 pharmacist may purchase more than 7.5 grams of a pseudoephedrine product within
23 a 30-day period without the authorization of a physician, dentist, or veterinarian.

24 **SECTION 28.** 961.23 (8) of the statutes is created to read:

1 961.23 (8) No person may sell a pseudoephedrine product to a person under 18
2 years of age, and no person under 18 years of age may purchase a pseudoephedrine
3 product.

4 **SECTION 29.** 961.235 of the statutes is created to read:

5 **961.235 Records relating to sales of pseudoephedrine products.**

6 Records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine
7 product may be kept in either a paper or electronic format and shall be maintained
8 by the pharmacy for at least 2 years. Only a pharmacist or a law enforcement officer
9 may have access to information recorded under s. 961.23 (4) with respect to the sale
10 of a pseudoephedrine product.

11 **SECTION 30.** 961.41 (3j) of the statutes is created to read:

12 **961.41 (3j) PURCHASES OF PSEUDOEPHEDRINE PRODUCTS.** Whoever purchases
13 more than 7.5 grams of a pseudoephedrine product within a 30–day period, other
14 than by purchasing the product in person from a pharmacy or pharmacist, is guilty
15 of a Class I felony. This subsection does not apply to a purchase by a physician,
16 dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician,
17 dentist, or veterinarian.

18 **SECTION 31.** 961.437 of the statutes is renumbered 961.67.

19 **SECTION 32.** 961.452 of the statutes is created to read:

20 **961.452 Defenses in certain schedule V prosecutions.** (1) A person who
21 proves all of the following by a preponderance of the evidence has a defense to
22 prosecution under s. 961.41 (1) (j) that is based on the person’s violation of a condition
23 specified in s. 961.23 with respect to the person’s distribution or delivery of a
24 pseudoephedrine product:

1 (a) The person did not knowingly or recklessly violate the condition under s.
2 961.23.

3 (b) The person reported his or her own violation of the condition under s. 961.23
4 to a law enforcement officer in the county or municipality in which the violation
5 occurred within 30 days after the violation.

6 **(2)** A seller who proves all of the following by a preponderance of the evidence
7 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's
8 violation of a condition specified in s. 961.23 with respect to the person's distribution
9 or delivery of a pseudoephedrine product:

10 (a) The person did not knowingly or recklessly violate the condition under s.
11 961.23.

12 (b) The acts or omissions constituting the violation of the condition under s.
13 961.23 were the acts or omissions of one or more of the person's employees.

14 (c) The person provided training to each of those employees regarding the
15 restrictions imposed under s. 961.23 on the delivery of pseudoephedrine products.

16 **(3)** A person who proves all of the following by a preponderance of the evidence
17 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):

18 (a) The purchaser presented an identification card that contained a name or
19 address other than the person's own.

20 (b) The appearance of the purchaser was such that an ordinary and prudent
21 person would believe that the purchaser was the person depicted in the photograph
22 contained in that identification card.

23 (c) The sale was made in good faith, in reasonable reliance on the identification
24 card and appearance of the purchaser, and with the belief that the name and address
25 of the purchaser were as listed on the identification card.

1 (4) A person who proves all of the following by a preponderance of the evidence
2 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):

3 (a) The purchaser presented an identification card that indicated that he or she
4 was 18 years of age or older.

5 (b) The appearance of the purchaser was such that an ordinary and prudent
6 person would believe that the purchaser was 18 years of age or older.

7 (c) The sale was made in good faith, in reasonable reliance on the identification
8 card and appearance of the purchaser, and with the belief that the purchaser was 18
9 years of age or older.

10 **SECTION 33.** 961.453 of the statutes is created to read:

11 **961.453 Purchases of pseudoephedrine products on behalf of another**
12 **person.** (1) (a) No person may, with the intent to acquire more than 7.5 grams of
13 a pseudoephedrine product within a 30-day period, knowingly solicit, hire, direct,
14 employ, or use another to purchase a pseudoephedrine product on his or her behalf.

15 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of
16 a Class I felony.

17 2. If the person who is solicited, hired, directed, employed, or used to purchase
18 the pseudoephedrine product is an individual who is less than 18 years of age, the
19 actor is guilty of a Class H felony.

20 (2) No person may purchase a pseudoephedrine product on behalf of another
21 with the intent to facilitate another person's manufacture of methamphetamine. A
22 person who violates this subsection is guilty of a Class I felony.

23 **SECTION 34.** 961.49 (title) of the statutes is amended to read:

1 **961.49** (title) ~~Distribution of or possession with~~ Offenses involving
2 **intent to deliver or distribute a controlled substance on or near certain**
3 **places.**

4 **SECTION 35.** 961.49 of the statutes is renumbered 961.49 (1m).

5 **SECTION 36.** 961.49 (2m) of the statutes is created to read:

6 **961.49 (2m)** If any person violates s. 961.65 and, during the violation, the
7 person intends to deliver or distribute methamphetamine or a controlled substance
8 analog of methamphetamine under any of the circumstances listed under sub. (1m)
9 (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by
10 5 years.

11 **SECTION 37.** 961.61 of the statutes is renumbered 961.003.

12 **SECTION 38.** 961.62 of the statutes is renumbered 961.005.

13 **SECTION 39.** 961.65 of the statutes is created to read:

14 **961.65 Possessing materials for manufacturing methamphetamine.**

15 Except as authorized by this chapter, any person who possesses an ephedrine or
16 pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine,
17 anhydrous ammonia, or pressurized ammonia with intent to manufacture
18 methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of
19 ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product
20 to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent
21 to manufacture methamphetamine. In this section, “ephedrine” and
22 “pseudoephedrine” include any of their salts, isomers, and salts of isomers.

23 **SECTION 40.** 973.017 (8) (a) 3. of the statutes is created to read:

24 **973.017 (8) (a) 3.** When making a sentencing decision concerning a person
25 convicted of violating s. 961.65, the court shall consider as an aggravating factor the

1 fact that the person intended to deliver or distribute methamphetamine or a
2 controlled substance analog of methamphetamine to a prisoner within the precincts
3 of any prison, jail, or house of correction.

4 **SECTION 41.** 973.017 (8) (c) of the statutes is created to read:

5 973.017 (8) (c) When making a sentencing decision concerning a person
6 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
7 fact that the person intended to deliver or distribute methamphetamine or a
8 controlled substance analog of methamphetamine and that the person knowingly
9 used a public transit vehicle during the violation.

10 **SECTION 42. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of sections 961.22 (2m) and 961.23 (1) to (8) of the statutes
13 takes effect on the first day of the 4th month beginning after publication.

14

(END)

1 **analysis INSERT a**

Rules regarding storage of certain schedule V controlled substances

Under current law, the Pharmacy Examining Board must adopt rules setting minimum standards regarding manufacturing and distributing drugs. This substitute amendment prohibits the Pharmacy Examining Board from adopting rules that impose requirements regarding the storage of a controlled substance in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless: 1) the controlled substance is included in schedule I, II, III, or IV; or 2) the controlled substance is also a controlled substance under federal law. (Under the substitute amendment, this prohibition would apply only to pseudoephedrine products. All other controlled substances are included in schedule I, II, III, or IV or are controlled substances under federal law.)

2 **INSERT 6/19**

3 **SECTION ~~1~~ 450.07 (4) (b)** of the statutes is renumbered 450.07 (4) (b) (intro.)
4 and amended to read:

5 450.07 (4) (b) ^(intro.) The board shall adopt rules prescribing minimum standards for
6 manufacturing and distributing drugs. Rules adopted under this paragraph may not
7 impose requirements regarding the storage of a controlled substance in a safe, a steel
8 cabinet, a vault, or any other secure storage compartment, area, room, or building
9 unless one of the following applies:

History: 1985 a. 146; 1991 a. 39.

10 **SECTION ~~2~~ 450.07 (4) (a) 1.** of the statutes is created to read:

11 450.07 (4) (a) 1. The controlled substance is included in schedule I, II, III, or
12 IV under ch. 961.

13 **SECTION ~~3~~ 450.07 (4) (a) 2.** of the statutes is created to read:

14 450.07 (4) (a) 2. The controlled substance is also a controlled substance under
15 federal law.