

2005 Senate Bill 78

Date of enactment: **June 7, 2005**
Date of publication*: **June 21, 2005**

2005 WISCONSIN ACT 14

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

SECTION 8. 450.07 (4) (b) of the statutes is renumbered 450.07 (4) (b) (intro.) and amended to read:

450.07 (4) (b) (intro.) The board shall adopt rules prescribing minimum standards for manufacturing and distributing drugs. Rules adopted under this paragraph may not 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 one of the following applies:

SECTION 9. 450.07 (4) (b) 1. of the statutes is created to read:

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

SECTION 10. 450.07 (4) (b) 2. of the statutes is created to read:

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

SECTION 11. 895.555 (1) of the statutes is amended to read:

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

SECTION 12. 938.34 (14s) (am) (intro.) of the statutes is amended to read:

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

SECTION 13. 939.32 (1) (g) of the statutes is created to read:

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

SECTION 14. 939.62 (2m) (a) 2m. am. of the statutes is created to read:

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

SECTION 15. 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is compa-

rable to a crime specified in this subd. 2m. a., am. b., or c.

SECTION 16. 939.62 (2m) (d) of the statutes is amended to read:

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

SECTION 17. 961.01 (11t) of the statutes is created to read:

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

SECTION 18. 961.01 (12t) of the statutes is created to read:

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

SECTION 19. 961.01 (20c) of the statutes is created to read:

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

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

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

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

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

SECTION 21. 961.11 (6) (a) of the statutes is amended to read:

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

SECTION 22. 961.22 (2m) of the statutes is created to read:

961.22 (2m) PSEUDOEPHEDRINE. Any pseudoephedrine product.

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

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

SECTION 24. 961.23 (1) of the statutes is amended to read:

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

SECTION 25. 961.23 (2) of the statutes is amended to read:

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

SECTION 26. 961.23 (3) of the statutes is amended to read:

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

SECTION 27. 961.23 (4) of the statutes is amended to read:

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

SECTION 28. 961.23 (5) of the statutes is amended to read:

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

~~(7) No person other than a physician, dentist, veterinarian, or pharmacist may possess more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist, or veterinarian.~~

This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

SECTION 29. 961.23 (6) of the statutes is created to read:

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

SECTION 30. 961.23 (8) of the statutes is created to read:

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

SECTION 31. 961.235 of the statutes is created to read:

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

SECTION 32. 961.41 (3j) of the statutes is created to read:

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

SECTION 33. 961.437 of the statutes is renumbered 961.67.

SECTION 34. 961.452 of the statutes is created to read:

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

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

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

(2) A seller who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition specified in s. 961.23 with respect to

the person's distribution or delivery of a pseudoephedrine product:

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

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

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

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

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

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

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

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

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

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

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

SECTION 35. 961.453 of the statutes is created to read:

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

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

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

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

SECTION 36. 961.49 (title) of the statutes is amended to read:

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

SECTION 37. 961.49 of the statutes is renumbered 961.49 (1m).

SECTION 38. 961.49 (2m) of the statutes is created to read:

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

SECTION 39. 961.61 of the statutes is renumbered 961.003.

SECTION 40. 961.62 of the statutes is renumbered 961.005.

SECTION 41. 961.65 of the statutes is created to read:

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

SECTION 42. 973.017 (8) (a) 3. of the statutes is created to read:

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

SECTION 43. 973.017 (8) (c) of the statutes is created to read:

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

SECTION 44. Effective dates. This act takes effect on the day after publication, except as follows:

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