SENATE BILL 652 (LRB -4724)

An Act to amend 961.23 (6), 961.41 (3j) and 961.453 (1) (a) of the statutes; relating to: substances covered by certain criminal statutes relating to the controlled substance pseudoephedrine.

2006

03-06.	S.	Introduced by Senator **Harsdorf**; cosponsored by Representatives **Rhoades** and **Sherman**.	
03-03.	S.	Read first time and referred to committee on Health, Children, Families, Aging and Long Term Care.	
03-06.	S.	Public hearing held.	
03-06.	S.	Executive action taken.	
03-06.	S.	Report introduction and adoption of Senate Amendment 1 to Senate Substitute Amendment 1 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0 **(LRB a2668)**.	
03-06.	S.	Report introduction and adoption of Senate Substitute Amendment 1 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0 **(LRB s0623)**.	
03-06.	S.	Report passage as amended recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0.	
03-06.	S.	Available for scheduling.	
03-06.	S.	Placed on calendar 3-7-2006 by committee on Senate Organization.	
03-07.	S.	Read a second time.	
03-07.	S.	Senate amendment 1 to Senate substitute amendment 1 **adopted**.	
03-07.	S.	Senate substitute amendment 1 **adopted**.	
03-07.	S.	Ordered to a third reading.	
03-07.	S.	Rules suspended.	
03-07.	S.	Read a third time and **passed**.	
03-07.	S.	Ordered immediately messaged.	
03-07.	A.	Received from Senate	910
03-07.	A.	Read first time and referred to committee on Rules	913
03-07.	A.	Placed on calendar 3-9-2006 by committee on Rules.	
03-07.	A.	Made a special order of business at 11:14 A.M. on 3-9-2006 pursuant to Assembly Resolution 51	933
03-09.	A.	Read a second time	944
03-09.	A.	Ordered to a third reading	944
03-09.	A.	Rules suspended	944
03-09.	A.	Read a third time and **concurred in**	944
03-09.	A.	Ordered immediately messaged	944
03-10.	S.	Received from Assembly concurred in.	

2005
ENROLLED BILL

05en S B- 652

ADOPTED DOCUMENTS:

☐ Orig ☐ Engr S SubAmdt 1 05 S0623/1

Amendments to above (if none, write "NONE"): SA1 a2668/1

Corrections – show date (if none, write "NONE"): None

Topic Rel

3/15/03
Date

S R Miller
Enrolling Drafter

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SENATE SUBSTITUTE AMENDMENT 1,

TO 2005 SENATE BILL 652

March 6, 2006 – Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND LONG TERM CARE.

1 AN ACT ***to renumber and amend*** 961.235; ***to amend*** 146.81 (4), 961.23 (6),
2 961.41 (3j) and 961.453 (1) (a); and ***to create*** 961.235 (1) and 961.235 (3) of the
3 statutes; **relating to:** substances covered by certain criminal statutes relating
4 to the controlled substance pseudoephedrine and law enforcement officers'
5 access to pharmacy records regarding sales of pseudoephedrine products.

Analysis by the Legislative Reference Bureau

Weight–based crimes involving pseudoephedrine; what is measured

Current law contains a number of provisions that regulate the possession or acquisition of the controlled substance pseudoephedrine. One such provision prohibits the possession of products containing pseudoephedrine (as well as certain other products and materials) with the intent to manufacture the controlled substance methamphetamine. Under that law, a person's possession of more than nine grams of pseudoephedrine, other than pseudoephedrine contained in liquid–filled gelcaps or certain other products, creates a rebuttable presumption that the person intended to manufacture methamphetamine. Whether that presumption applies depends on the weight of the pseudoephedrine itself, as opposed to the weight of the product containing it. The weight of pseudoephedrine products, however, does matter in the context of prohibitions relating to the acquisition of pseudoephedrine.

For example, current law prohibits a person from purchasing more than seven and one–half grams of a pseudoephedrine product within a 30–day period, other than by purchasing it in person from a pharmacy or pharmacist.

This substitute amendment revises weight–based prohibitions relating to the acquisition of pseudoephedrine (all of which involve a seven and one–half gram threshold) so that they relate to the weight of the pseudoephedrine itself — not the weight of the product containing it. The prohibitions affected are: 1) the prohibition described above regarding certain purchases that are not made in person from a pharmacy or pharmacist; 2) the prohibition regarding certain purchases made without the authorization of a physician, dentist, or veterinarian; and 3) the prohibition regarding attempting to acquire pseudoephedrine under certain circumstances by having another person purchase it on his or her behalf.

Records of sales of pseudoephedrine; access by law enforcement officers

Current law specifies that, whenever a person purchases a pseudoephedrine product from a pharmacy, the pharmacist must record the person's name and address and the name and amount of the pseudoephedrine product. Current law further specifies that only pharmacists and law enforcement officers have access to that information. In separate provisions, however, current law limits access to a broad range of patient health care records, including records related to the health of a patient that are prepared by or under the supervision of pharmacist. Under those provisions, patient health care records are confidential and may be made available only to certain individuals under specified circumstances. None of the exceptions to the confidentiality requirement apply specifically to law enforcement officers.

This substitute amendment specifies that the records described above relating to the sale of pseudoephedrine products are not patient health care records. In addition, the substitute amendment revises the provision stating that law enforcement officers may have access to those records and specifies that pharmacists must provide those records to a law enforcement officer who requests them.

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

1 **SECTION 1.** 146.81 (4) of the statutes is amended to read:

2 146.81 **(4)** "Patient health care records" means all records related to the health
3 of a patient prepared by or under the supervision of a health care provider, including
4 the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject
5 to s. 51.30, reports collected under s. 69.186, records of tests administered under s.
6 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), <u>records related to sales</u>
7 <u>of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by</u>

pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under s. 302.388 (2). INSERT 1

SECTION 2. 961.23 (6) of the statutes, as created by 2005 Wisconsin Act 14, is amended to read:

INS. 2

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 3. 961.235 of the statutes, as created by 2005 Wisconsin Act 14, is renumbered 961.235 (2) and amended to read:

961.235 **(2)** Records ~~required under s. 961.23 (4) with respect to the sale~~ of ~~a~~ pseudoephedrine ~~product~~ sales may be kept in either a paper or electronic format and shall be maintained by the pharmacy for at least 2 years. ~~Only~~ Except as provided in sub. (3), only a pharmacist ~~or a law enforcement officer~~ may have access to records of pseudoephedrine sales and information ~~recorded under s. 961.23 (4) with respect to the sale of a pseudoephedrine product~~ contained in those records.

SECTION 4. 961.235 (1) of the statutes is created to read:

961.235 **(1)** In this section, "records of pseudoephedrine sales" means records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine product.

SECTION 5. 961.235 (3) of the statutes is created to read:

961.235 **(3)** A pharmacist shall make records required under s. 961.23 (4) available to a law enforcement officer who requests them. Law enforcement officers may make those records available to other persons or redisclose information from

those records to other persons only in connection with a criminal investigation or prosecution under this chapter.

SECTION 6. 961.41 (3j) of the statutes, as created by 2005 Wisconsin Act 14, is amended to read:

INS. 3

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 7. 961.453 (1) (a) of the statutes, as created by 2005 Wisconsin Act 14, is amended to read:

961.453 **(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.

(END)

INS. 4

SENATE AMENDMENT 1,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2005 SENATE BILL 652

March 6, 2006 – Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND LONG TERM CARE.

At the locations indicated, amend the substitute amendment as follows:

1. Page 3, line 4: after that line insert:

"**SECTION 1m.** 961.22 (2m) of the statutes, as created by 2005 Wisconsin Act 14, is repealed and recreated to read:

961.22 **(2m)** PSEUDOEPHEDRINE. Pseudoephedrine or any of its salts, isomers, or salts of isomers.".

2. Page 3, line 8: delete "~~product~~" and substitute "contained in a pseudoephedrine product".

3. Page 4, line 6: delete "~~product~~" and substitute "contained in a pseudoephedrine product".

4

1 **4.** Page 4, line 14: delete "~~product~~" and substitute "contained in a
2 pseudoephedrine product".
3 **(END)**