

CHAPTER 90 , Laws of 1981

AN ACT to repeal 450.04 (3) (d); to amend 100.26 (6), 161.43 (1) (b) and 450.04 (3) (b); and to create 100.182, 100.26 (7) and 161.41 (4) of the statutes, relating to regulating commercial traffic in substances that resemble drugs and creating a penalty.

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

SECTION 1. 100.182 of the statutes is created to read:

**100.182 Fraudulent drug advertising.** (1) In this section, "drug" has the meaning specified in s. 450.06.

(2) No person may advertise the availability of any drug or publish or circulate such an advertisement with the intent of selling, increasing the consumption of or generating interest in the drug if the advertisement contains any untrue, deceptive or misleading representations material to the effects of the drug.

(3) No person may expressly or impliedly represent that a substance may be used to obtain physical or psychological effects associated with the use of a drug in order to promote the sale of the substance unless it is lawfully marketed for human consumption under the United States food, drug and cosmetic act under 21 USC 301 to 392. A representation that the substance is not intended for human consumption is not a defense to prosecution for violating this subsection.

(4) No person may advertise a drug that the person knows is intentionally manufactured substantially to resemble a controlled substance or that the person represents to be of a nature, appearance or effect that will allow the recipient to display, sell, distribute or use the drug as a controlled substance, unless the drug is controlled under ch. 161.

(5) (a) Any district attorney, after informing the department of justice, or the department of justice or the department of agriculture, trade and consumer protection may seek a temporary or permanent injunction in circuit court to restrain any violation of this section. Prior to entering a final judgment the court may award damages to any person suffering monetary loss because of a violation. The department of justice may subpoena any person or require the production of any document to aid in investigating alleged violations of this section.

(b) In lieu of instituting or continuing an action under this subsection, the department of agriculture, trade and consumer protection or the department of justice may accept a written assurance from a violator of this section that the violation has ceased. If the terms of the assurance so provide, its acceptance by either department prevents the other department and all district attorneys from prosecuting the violation. An assurance is not evidence of a violation of this section but violation of an assurance is subject to the penalties and remedies of violating this section.

SECTION 2. 100.26 (6) of the statutes is amended to read:

100.26 (6) The department of justice or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of an injunction issued under s. 100.18, 100.182 or 100.20 (6) or an order issued under s. 100.20.

SECTION 3. 100.26 (7) of the statutes is created to read:

100.26 (7) Any person violating s. 100.182 shall be fined not less than \$500 nor more than \$5,000 or imprisoned not more than one year or both for each offense. Each unlawful advertisement published, printed or mailed on separate days or in separate publications, hand bills or direct mailings is a separate violation of this section.

SECTION 4. 161.41 (4) of the statutes is created to read:

161.41 (4) (a) No person may knowingly deliver, attempt to deliver or cause to be delivered a noncontrolled substance and expressly or impliedly represent to the recipient:

1. The substance is a controlled substance; or
2. The substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute or use the noncontrolled substance as a controlled substance.

(b) Proof of any of the following is prima facie evidence of a representation specified in par. (a) 1 or 2:

1. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

2. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

3. The substance is not labeled in accordance with 21 USC 352 or 353.

4. The person delivering, attempting to deliver or causing delivery of the substance to be made states to the recipient that the substance may be resold at a price that substantially exceeds the value of the substance.

(c) A person convicted of violating this subsection may be fined not more than \$5,000 or imprisoned not more than one year or both.

SECTION 5. 161.43 (1) (b) of the statutes is amended to read:

161.43 (1) (b) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to ~~render the drug a counterfeit substance:~~

1. To counterfeit a drug; or
2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

SECTION 6. 450.04 (3) (b) of the statutes is amended to read:

450.04 (3) (b) The sale of ~~proprietary medicines or aspirin~~ any nonprescription drug in sealed packages, labeled to comply with the ~~federal and state pure food and drug law~~ United States food, drug and cosmetic act under 21 USC 301 to 392, with directions for using, and the name and location of the manufacturer, packer or distributor.

SECTION 7. 450.04 (3) (d) of the statutes is repealed.

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