

## 1999 ASSEMBLY BILL 204

March 15, 1999 – Introduced by Representatives SUDER, AINSWORTH, ALBERS, FREESE, GOETSCH, HUEBSCH, KESTELL, KLUSMAN, MUSSER, NASS, OWENS, PETROWSKI, PLALE, POWERS, SERATTI, SKINDRUD, STONE and SYKORA, cosponsored by Senators DARLING, BRESKE, CLAUSING, FITZGERALD, ROESSLER and SCHULTZ. Referred to Committee on Judiciary and Personal Privacy.

1     **AN ACT** *to create* 961.535 of the statutes; **relating to:** the right to recover for  
2           injuries and costs resulting from the use of a controlled substance or a  
3           controlled substance analog.

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### *Analysis by the Legislative Reference Bureau*

This bill allows certain persons to bring a civil action to recover damages resulting from the use of a controlled substance or a controlled substance analog. Under the bill, the parent, guardian, child, spouse, sibling or employer of an individual who used an illegally marketed controlled substance or controlled substance analog is allowed to recover damages resulting from that use. The bill allows a child exposed while in utero to an illegally marketed controlled substance or controlled substance analog to bring an action for damages resulting from that exposure. The bill allows a medical provider, insurer or nonprofit drug treatment organization that expended money as a result of the illegal drug use, as well as an individual injured as a result of the illegal drug use, to bring an action to recover the money expended or damages incurred. The bill also allows the individual who used the controlled substance or a controlled substance analog to recover for his or her injury under very limited circumstances.

The bill specifies who may be required to pay the damages, including the person who manufactured, distributed or delivered the illegally marketed controlled substance or controlled substance analog. The bill specifies what damages may be recovered, including economic and noneconomic damages, punitive damages, the costs of bringing the action and attorney fees. Under the bill, the court may delay

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a civil action commenced under this bill if requested to do so by a governmental organization investigating or prosecuting a person regarding the illegal marketing of a controlled substance or a controlled substance analog.

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

1           **SECTION 1.** 961.535 of the statutes is created to read:

2           **961.535 Civil action for damages. (1)** In this section, “illegally marketed  
3 controlled substance or controlled substance analog” means a controlled substance  
4 or controlled substance analog that was manufactured, distributed or delivered, or  
5 possessed with the intent to manufacture, distribute or deliver, in violation of s.  
6 961.41.

7           **(2)** (a) The following persons may bring a civil action for damages resulting  
8 from another individual’s use of an illegally marketed controlled substance or  
9 controlled substance analog:

10           1. The parent, legal guardian, child, spouse or sibling of the individual who  
11 used an illegally marketed controlled substance or controlled substance analog.

12           2. An individual who was exposed to a controlled substance or controlled  
13 substance analog in utero as the result of the mother’s use of an illegally marketed  
14 controlled substance or controlled substance analog.

15           3. An employer of the individual who used an illegally marketed controlled  
16 substance or controlled substance analog.

17           4. Any medical facility or insurer, or any nonpublic agency or organization that  
18 funds a drug treatment program or employe assistance program or that expended  
19 money for the individual who used an illegally marketed controlled substance or  
20 controlled substance analog.

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1           5. A person injured as the result of the wilful, reckless or negligent action of the  
2 individual while the individual was using an illegally marketed controlled substance  
3 or controlled substance analog if that injury was caused by the use of an illegally  
4 marketed controlled substance or controlled substance analog.

5           (b) A person entitled to bring an action under this subsection may bring the  
6 action for damages against any of the following:

7           1. A person who delivered or distributed the controlled substance or controlled  
8 substance analog to the individual, in violation of s. 961.41.

9           2. A person who illegally marketed a controlled substance or controlled  
10 substance analog, if all of the following conditions are met:

11           a. The person illegally marketed the same kind of controlled substance or  
12 controlled substance analog as that used by the individual.

13           b. The illegal marketing occurred in the same county as the individual's use of  
14 an illegally marketed controlled substance or controlled substance analog.

15           c. The illegal marketing occurred during any period of time that the individual  
16 used the same kind of illegally marketed controlled substance or controlled  
17 substance analog.

18           d. The person who illegally marketed the same kind of controlled substance or  
19 controlled substance analog was previously convicted of illegally marketing the same  
20 kind of controlled substance or controlled substance analog as that used by the  
21 individual.

22           e. The violation that resulted in a conviction under subd. 2. d. occurred in the  
23 same county as the individual's use of an illegally marketed controlled substance or  
24 controlled substance analog.

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1 (c) A person entitled to bring an action under this subsection may recover the  
2 following damages:

3 1. Economic damages, including the cost of treatment, rehabilitation and  
4 medical expenses, the loss of economic and educational potential and the loss of  
5 productivity.

6 2. Noneconomic damages, as defined in s. 893.55 (4) (a).

7 3. Punitive damages.

8 4. Notwithstanding s. 814.04 (1), reasonable attorney fees.

9 5. The costs of bringing the action, including the reasonable costs of expert  
10 testimony.

11 **(3)** (a) An individual who used an illegally marketed controlled substance or  
12 controlled substance analog may bring and maintain a civil action for damages  
13 resulting from that use if all of the following apply:

14 1. The individual personally discloses to law enforcement authorities all of the  
15 information he or she knows regarding his or her sources of illegally marketed  
16 controlled substances or controlled substance analogs.

17 2. The individual does not use an illegally marketed controlled substance or  
18 controlled substance analog for the 30 days immediately preceding commencement  
19 of the action.

20 3. The individual does not use an illegally marketed controlled substance or  
21 controlled substance analog for the period that the action is pending.

22 (b) An individual entitled to bring an action under this subsection may bring  
23 a civil action for damages only against a person who illegally marketed the controlled  
24 substance or controlled substance analog used by the individual.

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1 (c) An individual entitled to bring an action under this subsection may recover  
2 the following damages:

3 1. Economic damages, including the cost of treatment, rehabilitation and  
4 medical expenses, the loss of economic and educational potential and the loss of  
5 productivity.

6 2. Notwithstanding s. 814.04 (1), reasonable attorney fees.

7 3. The costs of bringing the action, including the reasonable costs of expert  
8 testimony.

9 (d) If an individual dies as the result of the use of an illegally marketed  
10 controlled substance or controlled substance analog, the procedures under s. 895.04  
11 shall be followed regarding recovery for the wrongful death of the individual.

12 **(4)** (a) Two or more persons may join as plaintiffs in an action under sub. (2)  
13 if they have at least one defendant in common and if any period of the individual's  
14 use of an illegally marketed controlled substance or controlled substance analog  
15 related to each plaintiff's damages overlaps.

16 (b) Two or more persons may be joined as defendants in an action under this  
17 section if those persons are liable under this section to at least one plaintiff.

18 (c) A plaintiff need not participate in obtaining all the relief demanded when  
19 more than one plaintiff is joined in an action under sub. (2).

20 (d) A defendant need not participate in defending against all the relief  
21 demanded when more than one defendant is joined in an action under this section.

22 **(5)** The court shall stay an action commenced under this section if a  
23 governmental agency involved in an investigation or prosecution involving the  
24 alleged violation of s. 961.41 petitions the court for such a stay. The court shall lift

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**SECTION 1**

1 the stay when the governmental agency notifies the court that the investigation or  
2 prosecution is completed.

3 (END)