

1999 DRAFTING REQUEST

Bill

Received: 12/23/98

Received By: nelsorpl

Wanted: As time permits

Identical to LRB:

For: Scott Suder (608) 267-0280

By/Representing: Ann

This file may be shown to any legislator: NO

Drafter: nelsorpl

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Topic:

Recovery for injuries or costs resulting from controlled substance use

Instructions:

See AS A 1 to AB 135 plus AA2 to AS A 1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	nelsorp 1 12/28/98	chanaman 01/12/99		_____			
/1			hhagen 01/19/99	_____	lrb-docadmin 01/19/99	lrb-docadmin 01/25/99	

→ Not Needed

FE Sent For:

<END>

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I?	nelsorpl	CMY 1/29 /					
		1/19/11	1/15	1/19			

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<END>



cmh  
+  
jlg

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1

**AN ACT . . . relating to: ???**

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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 a 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 that manufactured, distributed or delivered the illegally marketed controlled substance or a 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 a civil action commenced under this bill if requested to do so by a governmental

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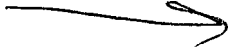
organization investigating or prosecuting a person regarding the illegal marketing of a controlled substance or a controlled substance analog.

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✓  
1 h 9/17  
2-1

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

1



(END) ✓



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1997 ASSEMBLY BILL 135**

April 29, 1997 - Offered by COMMITTEE ON JUDICIARY.

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.

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

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

5 **961.536 Civil action for damages. (1)** In this section, "illegally marketed  
6 controlled substance or controlled substance analog" means a controlled substance  
7 or controlled substance analog that was manufactured, distributed or delivered, or  
8 possessed with the intent to manufacture, distribute or deliver, in violation of s.  
9 961.41.

10 (2) (a) The following persons may bring a civil action for **damages** resulting  
11 from another individual's use of an illegally marketed controlled substance or  
12 controlled substance analog:

Insert 2-1 (to ed)



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

3 2. An individual who was exposed to a controlled substance or controlled  
4 substance analog in utero as the result of the mother's use of an illegally marketed  
5 controlled substance or controlled substance analog.

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

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

12 5. A person injured as the result of the wilful, reckless or negligent action of the  
13 individual **while** the individual was using an illegally marketed controlled substance  
14 or controlled substance analog if that injury was caused by the use of an illegally  
15 marketed controlled substance or controlled substance analog.

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

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

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

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

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



INS 2-1

1 c. The illegal marketing occurred during any period of time that the individual  
2 used the same kind of illegally marketed controlled 'substance or controlled  
3 substance analog.

4 d. The person who illegally marketed the same kind of controlled substance or  
5 controlled substance analog was previously convicted of illegally marketing the same  
6 kind of controlled substance or controlled substance analog as that used by the  
7 individual.

8 e. The violation that resulted in a conviction under subd. 2. <sup>✓</sup>~~d.~~ <sup>✓</sup>occurred in the  
9 same county as the individual's use of an illegally marketed controlled substance or  
10 controlled substance analog.

11 (c) A person entitled to bring an action under this subsection <sup>✓</sup>may recover the  
12 following damages:

13 1. Economic damages, including the cost of treatment, rehabilitation and  
14 medical expenses, the loss of economic and educational potential and the loss of  
15 productivity.

16 2. Noneconomic damages, as <sup>im.</sup> ~~defined in~~ <sup>✓</sup>s. 893.55 (4) (a). <sup>✓</sup>

17 3. Punitive damages.

18 4. Notwithstanding s. <sup>✓</sup>814.04 <sup>✓</sup>(l), reasonable attorney fees.

19 5. The costs of bringing the action, including the reasonable costs of expert  
20 testimony.

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





INS 2-1

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

4 2. The individual does not use an illegally marketed controlled substance or  
5 controlled substance analog for the 30 days immediately preceding commencement  
6 of the action.

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

9 (b) An individual entitled to bring an action under this <sup>✓</sup>subsection <sup>✓</sup> may bring  
10 a civil action for damages only against a person who illegally marketed the controlled  
11 substance or controlled substance analog used by the individual.

12 (c) An individual entitled to bring an action under this <sup>✓</sup>subsection may recover  
13 the following damages:

14 1. Economic damages, including the cost of treatment, rehabilitation and  
15 medical expenses, the loss of economic and educational potential and the loss of  
16 productivity.

17 2. Notwithstanding s. <sup>✓</sup>814.04 <sup>✓</sup>(1), reasonable attorney fees.

18 3. The costs of bringing the action, including the reasonable costs of expert

19 <sup>insert</sup> testimony.

20 (4) (a) Two or more persons may join as plaintiffs in an action under <sup>✓</sup>sub. (2)

21 if they have at least one defendant in common and if any period of the individual's  
22 use of an illegally marketed controlled substance or controlled substance analog  
23 related to each plaintiff's damages overlaps.

24 (b) Two or more persons may be joined as <sup>✓</sup>defendants in an action under this  
25 section if those persons are liable under this section to at least one plaintiff.

19 insert  
20 4-19



INS 2-1

1 (c) A plaintiff need not participate in obtaining all the relief demanded when  
2 more than one plaintiff is joined in an action under sub. (2).<sup>✓</sup>

3 (d) A defen dant need not participate in defending against all the relief  
4 demanded when more than one defendant is joined in an action under this section.<sup>✓</sup>

5 (5) The court shall stay an action commenced under this section if a  
6 governmental agency involved in -an investigation or prosecution involving the  
7 alleged violation of s. 961.41<sup>✓x</sup> petitions the court for such a stay, The court shall lift  
8 the stay when the governmental agency notifies the court that the investigation or  
9 prosecution is completed.

insert  
2-1



10

(END)  
(END OF INSERT)



Insert 4-19

**ASSEMBLY AMENDMENT 2,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1997 ASSEMBLYBILL 135**

May 22, 1997 - Offered by Representatives MURAT and GREEN.

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

2 1. Page 4, line 19: after that line insert:

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

6

(END)  
(OF INSERT)

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561 JAN 19 1999**  
**5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

**Date:** 1/19/99

**To:** Representative Suder

**Relating to LRB drafting number:** LRB-1448

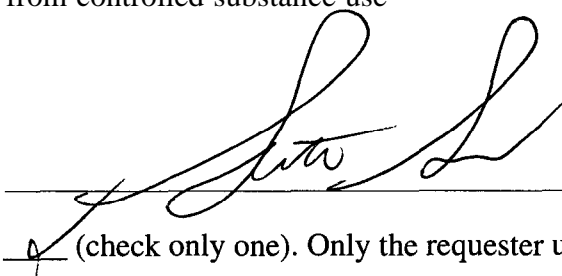
**Topic**

Recovery for injuries or costs resulting from controlled substance use

**Subject(s)**

Courts - miscellaneous

1. **JACKET** the draft for introduction \_\_\_\_\_



in the **Senate** or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached \_\_\_\_\_

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE** NOW, prior to introduction \_\_\_\_\_

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney  
Telephone: (608) 267-75 11

