

State of Wisconsin



2013 Assembly Bill 448

Date of enactment: April 7, 2014
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2013 WISCONSIN ACT 198

AN ACT *to renumber and amend* 961.335 (1); *to amend* subchapter III (title) of chapter 961 [precedes 961.31]; and *to create* 66.0437, 165.65, 450.01 (23) (n), 450.01 (23) (o), 450.115, 961.32 (2) (e), 961.335 (1) (c) 1. and 2. and 961.337 of the statutes; **relating to:** programs for the disposal of drugs, including controlled substances, and certain medical or drug-related items, and the regulation of prescription drugs.

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

SECTION 1. 66.0437 of the statutes is created to read:
66.0437 Drug disposal programs. (1) In this section, "political subdivision" has the meaning given in s. 165.65 (1) (e).

(2) A political subdivision may operate or authorize a person to operate a drug disposal program as provided under s. 165.65 (3).

SECTION 2. 165.65 of the statutes is created to read:
165.65 Drug disposal program. (1) **DEFINITIONS.** In this section:

(a) "Authorized under federal law" means permitted under 21 USC 801 to 971 or 21 CFR 1300 to 1321.

(am) "Controlled substance" has the meaning given in s. 961.01 (4).

(b) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(c) "Drug disposal program" means a program to receive household pharmaceutical items and to recycle, destroy, or otherwise dispose of those items. "Drug disposal program" does not include a sharps collection station operated in compliance with rules promulgated by the department of natural resources.

(d) 1. Except as provided under subd. 2., "household pharmaceutical item" means any of the following if lawfully possessed by an individual for the individual's own use, for the use of a member of the individual's household, or for the use of an animal owned by the individual or a member of the individual's household:

a. A drug, as defined in s. 450.01 (10); a prescription drug, as defined in s. 450.01 (20); or a controlled substance or controlled substance analog, if the drug, prescription drug, or controlled substance or controlled substance analog is located in or comes from a place where the individual, a member of the individual's household, an in-home hospice service, or an adult family home serving fewer than 5 adult members manages the use of the drug, prescription drug, or controlled substance or controlled substance analog.

b. A device, as defined in s. 450.01 (6), or an object used for administering a drug, if the device or object is located in or comes from a place where the individual, a member of the individual's household, an in-home hospice service, or an adult family home serving fewer than 5 adult members manages the use of the device or object.

2. "Household pharmaceutical item" does not include any of the following:

* Section 991.11, WISCONSIN STATUTES: 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."

a. Any item that may be contaminated with antineoplastic chemotherapy drugs, including objects used to administer drugs, gloves, and other items that have come into contact with chemotherapy drugs.

b. Any item containing elemental mercury.

(e) "Political subdivision" means a city, village, town, or county.

(2) DEPARTMENT OF JUSTICE AUTHORIZATION TO OPERATE A DRUG DISPOSAL PROGRAM. (a) Except as provided under sub. (3), no person may receive household pharmaceutical items pursuant to a drug disposal program unless the department of justice grants written authorization for that program under par. (b) or the program is authorized under federal law.

(b) The department of justice may, without a hearing, grant written authorization to a person to operate a drug disposal program if all of the following conditions are satisfied:

1. The person adopts written policies and procedures that comply with sub. (5). The department of justice shall review and either approve or disapprove in writing those policies and procedures. The department of justice shall approve the policies and procedures if the department of justice determines that the policies and procedures do not violate the requirements of this section or any other applicable federal or state law, and shall disapprove them otherwise. If the department of justice disapproves the policies and procedures, the department of justice shall state the reasons for that disapproval in writing to the person. At any time, the person may resubmit revised policies and procedures to the department of justice for its review and approval under this subdivision.

2. If the drug disposal program will receive household pharmaceutical items in any manner other than the transfer of a household pharmaceutical item in person to the program by a person that lawfully possesses the household pharmaceutical item, the person demonstrates to the satisfaction of the department of justice that those transfers will comply with any federal or state law applicable to the transportation and delivery of household pharmaceutical items.

(c) A person may not revise policies and procedures approved by the department of justice under par. (b) 1. unless the department of justice approves the revisions under par. (b) 1.

(d) Any determination or action by the department of justice under par. (b) or (c) is not subject to judicial review.

(3) AUTHORIZATION BY A POLITICAL SUBDIVISION TO OPERATE A DRUG DISPOSAL PROGRAM. A political subdivision may operate or the governing body of a political subdivision may grant written authorization for a person to operate a drug disposal program only if all of the following apply:

(a) The political subdivision or the authorized person operates the drug disposal program only within the

boundaries of the political subdivision, except as provided under sub. (4).

(b) The applicable requirements under sub. (5) are satisfied.

(c) The drug disposal program receives household pharmaceutical items only by means of delivery in person by a person that lawfully possesses the household pharmaceutical item, unless the drug disposal program is authorized under federal law to receive household pharmaceutical items by other means.

(4) MULTIJURISDICTIONAL DRUG DISPOSAL PROGRAM. A drug disposal program may operate within more than one political subdivision if the department of justice authorizes that program under sub. (2), all political subdivisions within which the drug disposal program operates authorize that program under sub. (3), or the program is authorized under federal law.

(5) OPERATION OF A DRUG DISPOSAL PROGRAM. (a) A person that operates a drug disposal program, except a drug disposal program that is authorized under federal law, shall establish and promptly update as appropriate written policies and procedures that do all of the following:

1. Describe in detail the manner in which the program operates, including an identification of the kinds of household pharmaceutical items that may be received under the program, whether the program may receive controlled substances and controlled substance analogs, whether household pharmaceutical items will be transferred by mail under the program, and the locations at which household pharmaceutical items may be transferred in person under the program.

2. List the name, address, telephone number, and 24-hour contact information for one or more persons in this state who are responsible for the operation of the program.

3. Ensure compliance with chs. 450 and 961; with any applicable provision under chs. 287, 289, and 291 and s. 299.51 relating to medical waste, solid waste, or hazardous waste; and with any other applicable federal or state law.

(b) 1. The policies and procedures for a drug disposal program authorized under sub. (2) and any changes to those policies and procedures are subject to review and approval under sub. (2) (b) 1.

2. Legal counsel for the political subdivision, or, at the discretion of the political subdivision, the department of justice if the political subdivision's legal counsel is not an employee of the political subdivision, shall review and either approve or disapprove the policies and procedures for a drug disposal program implemented or authorized under sub. (3) and any changes to those policies and procedures. Legal counsel, or the department of justice if appropriate, shall approve the policies and procedures or changes if it determines that the policies and procedures or changes do not violate the requirements of this section

or any other applicable federal or state law, and shall disapprove them otherwise. Any approval under this subdivision shall be in writing. The political subdivision shall provide a copy of the approval and a copy of the policies and procedures or changes to the policies and procedures to the department of justice.

(c) The operation of a drug disposal program, including a drug disposal program that is authorized under federal law, shall immediately cease if a law enforcement officer, as defined in s. 165.85 (2) (c), a federal law enforcement officer, as defined in s. 175.40 (7) (a) 1., the department of justice, or another federal or state agency notifies a designated contact person for the program that the program is in violation of any federal or state law enforceable by the officer, department of justice, or other agency. That notification is not subject to judicial review. The program may resume operation only upon the program's receipt of written notice from the officer, department of justice, or other agency that the program is no longer in violation of the federal or state law.

(d) Each person that operates a drug disposal program in this state shall, within 30 days after the drug disposal program begins operation, notify and provide all of the following information to the department of natural resources:

1. The location and hours of operation of the drug disposal program.
2. The name, address, telephone number, and 24-hour contact information for one or more persons in this state who are responsible for the operation of the program.
3. A description of the household pharmaceutical items the drug disposal program may receive.

(6) TRANSFER AND RECEIPT OF HOUSEHOLD PHARMACEUTICAL ITEMS. (a) Notwithstanding ss. 450.03 (1) and 450.11 (7) (g) and (h) and (9) (b), a person that lawfully possesses a household pharmaceutical item may transfer, and it is not a crime for such a person to transfer, the household pharmaceutical item to a drug disposal program if the program is authorized under sub. (2) or (3) or is authorized under federal law.

(b) Notwithstanding s. 450.11 (7) (g) and (h) and (9) (b), a person may receive, and it is not a crime for a person to possess, a household pharmaceutical item pursuant to a drug disposal program if the receipt or possession is within the scope of the program and the program is authorized under sub. (2) or (3) or is authorized under federal law or, if the receipt or possession is not within the scope of the program, the receipt or possession is inadvertent and the program promptly notifies an appropriate law enforcement officer of the receipt or possession and complies with any instructions the law enforcement officer provides.

SECTION 3. 450.01 (23) (n) of the statutes is created to read:

450.01 (23) (n) The operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), or the possession or delivery of a household pharmaceutical item, as defined in s. 165.65 (1) (d), within the scope of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law.

SECTION 4. 450.01 (23) (o) of the statutes is created to read:

450.01 (23) (o) The possession or delivery of a prescription drug within the scope of a written authorization under s. 450.115 (3).

SECTION 5. 450.115 of the statutes is created to read:
450.115 Drug disposal programs and authorizations. (1) In this section:

(a) "Guardian" means the person named by the court under ch. 880, 2003 stats., or ch. 48 or 54 that has the duty and authority of guardianship.

(b) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of those persons.

(c) "Trustee" means a person that holds in trust title to or power over property. "Trustee" includes an original, added, or successor trustee.

(d) "Ward" means a person for whom a guardian has been appointed.

(2) Nothing in this chapter, or rules promulgated under this chapter, prohibits any of the following:

(a) The direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

(b) The transfer of a prescription drug by a person that lawfully possesses the prescription drug to a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), and that accepts the prescription drug.

(c) Subject to sub. (4), the possession of a prescription drug under a written authorization described in sub. (3).

(3) (a) A guardian may grant written authorization to an adult who is related to the guardian's ward by blood, marriage, or adoption within the 3rd degree of kinship as computed under s. 990.001 (16), or to a domestic partner of the ward under ch. 770, for the disposal of a prescription drug that belongs to the ward.

(b) A personal representative or a trustee may grant written authorization to an adult beneficiary, as defined in s. 701.20 (2) (b), of the estate or trust for the disposal of a prescription drug that belongs to the estate or trust.

(c) A person who is a competent adult may grant written authorization to that person's domestic partner under

ch. 770 or to another adult who is related to that person by blood, marriage, or adoption within the 3rd degree of kinship as computed under s. 990.001 (16), for the disposal of a prescription drug that lawfully belongs to that person.

(4) A written authorization under sub. (3) is valid only to the extent permitted under federal law and only if all of the following conditions are satisfied:

(a) The authorization describes with reasonable specificity each prescription drug that is to be disposed of.

(b) The authorization is in the physical possession of the person authorized to dispose of the prescription drug and each prescription drug described in the authorization is, within 24 hours after the authorization is signed by the person granting the authorization, transferred to a drug disposal program under s. 165.65 or otherwise lawfully disposed of.

(c) The authorization and each prescription drug to be disposed of were obtained without consideration.

SECTION 6. Subchapter III (title) of chapter 961 [precedes 961.31] of the statutes is amended to read:

CHAPTER 961
SUBCHAPTER III
REGULATION OF MANUFACTURE,
DISTRIBUTION AND, DISPENSING,
AND POSSESSION OF CONTROLLED
SUBSTANCES

SECTION 7. 961.32 (2) (e) of the statutes is created to read:

961.32 (2) (e) A person actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

SECTION 8. 961.335 (1) of the statutes is renumbered 961.335 (1) (a) and amended to read:

961.335 (1) (a) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer, or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis, or other special uses, without restriction because of enumeration. ~~No~~

(b) ~~Except as provided in par. (c), no person shall may~~ engage in any such activity ~~described under par. (a) with-~~ out a permit issued under this section, ~~except that an~~

(c) 3. ~~An individual may be who is~~ designated and authorized to receive ~~the a~~ permit under this section for a college or university department, research unit, or similar administrative organizational unit, and students, laboratory technicians, research specialists, or chemical analysts under his or her supervision, ~~may be permitted possession and use of controlled substances for these purposes,~~ without ~~obtaining an individual additional permit issued under this section,~~ possess and use a controlled substance, for the purposes authorized in the permit received for the department or unit.

SECTION 9. 961.335 (1) (c) 1. and 2. of the statutes are created to read:

961.335 (1) (c) 1. A person who is actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), may, without a permit issued under this section, obtain or possess a controlled substance for the purposes of operating and implementing the drug disposal program.

2. A person who is permitted under federal law to dispose of a controlled substance may, without a permit issued under this section, possess the controlled substance for the purpose of disposing of the controlled substance.

SECTION 10. 961.337 of the statutes is created to read:
961.337 Drug disposal programs. Nothing in this chapter, or rules promulgated under this chapter, prohibits any of the following:

(1) The direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

(2) The transfer by the ultimate user, or by another person that lawfully possesses the controlled substance or controlled substance analog, of a controlled substance or controlled substance analog to a drug disposal program that has been authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), and that accepts the controlled substance or controlled substance analog.

SECTION 11. Effective date.

(1) This act takes effect on July 1, 2015.