

2013 Assembly Bill 448 (LRB -3348)

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. (FE)

2013

10-18.	A.	Introduced by Representatives Nygren, Bernier, Krug, Nerison, Petryk, Tranel, Bies, Born, Craig, Czaja, Endsley, Jagler, Kleefisch, Knodl, Knudson, LeMahieu, Marklein, Mursau, Murtha, A. Ott, Petersen, Ripp, Strachota, Swearingen, Tauchen, Tittl, Bernard Schaber, Doyle, Genrich, Hulsey, Johnson, Kahl, Richards, Smith, Wachs, Schraa, Ballweg and Billings ; cosponsored by Senators Harsdorf, Cowles, L. Taylor, Darling, Jauch, Gudex, Grothman, Olsen, T. Cullen, Lassa, Ellis, Shilling, Petrowski, Lazich, Miller, Carpenter, Schultz, Wirch, Erpenbach, Hansen and Risser.	375
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11-04.	A.	Senator Vukmir added as a cosponsor	402

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ENROLLED BILL

13en A B-448 ✓

ADOPTED DOCUMENTS:

Orig Engr SubAmdt 13-334812 ✓

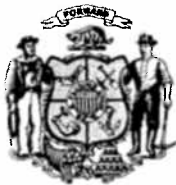
Amendments to above (if none, write "NONE"): AA1 - a 1086/1 ✓
AA2 - a 1386/1 ✓

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

Topic Rel

2-21-14
Date

S. Miller
Enrolling Drafter



2013 ASSEMBLY BILL 448

October 18, 2013 - Introduced by Representatives NYGREN, BERNIER, KRUG, NERISON, PETRYK, TRANEL, BIES, BORN, CRAIG, CZAJA, ENDSLEY, JAGLER, KLEEFISCH, KNODL, KNUDSON, LEMAHIEU, MARKLEIN, MURSAU, MURTHA, A. OTT, PETERSEN, RIPP, STRACHOTA, SWEARINGEN, TAUCHEN, TITTL, BERNARD SCHABER, DOYLE, GENRICH, HULSEY, JOHNSON, KAHL, RICHARDS, SMITH, WACHS, SCHRAA, BALLWEG and BILLINGS, cosponsored by Senators HARSDFORF, COWLES, L. TAYLOR, DARLING, JAUCH, GUDEX, GROTHMAN, OLSEN, T. CULLEN, LASSA, ELLIS, SHILLING, PETROWSKI, LAZICH, MILLER, CARPENTER, SCHULTZ, WIRCH, ERPENBACH, HANSEN and RISSER. Referred to Committee on Criminal Justice.

1 **AN ACT to renumber and amend** 961.335 (1); **to amend** subchapter III (title)
2 of chapter 961 [precedes 961.31]; and **to create** 66.0437, 165.65, 450.01 (23) (n),
3 450.01 (23) (o), 450.115, 961.32 (2) (e), 961.335 (1) (c) 1. and 2. and 961.337 of
4 the statutes; **relating to:** programs for the disposal of drugs, including
5 controlled substances, and certain medical or drug-related items, and the
6 regulation of prescription drugs.

Analysis by the Legislative Reference Bureau

Under current law, a person may not, and it is often a crime to, deliver, receive, or possess certain drugs unless the person is a licensed pharmacist or other licensed practitioner or has a valid prescription for the drug.

Under this bill, the Department of Justice (DOJ) may authorize the operation of drug disposal programs in this state to receive, for destruction, drugs, including prescription drugs, controlled substances and controlled substance analogs, and certain medical and drug delivery devices (collectively, pharmaceutical items). DOJ may authorize a person to operate a drug disposal program if, among other things, the person demonstrates to the satisfaction of DOJ that the program's receipt of pharmaceutical items will comply with federal and state laws applicable to the transportation and delivery of pharmaceutical items. The bill requires a drug disposal program to adopt policies and procedures that describe in detail the place and manner of the program's operation, provide the 24-hour contact information for

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at least one person in this state who is responsible for the program, and ensure compliance with applicable state and federal laws. DOJ must approve the policies and procedures before a drug disposal program may begin operation.

The bill also provides that a city, village, town, or county (political subdivision) may operate or authorize another person to operate a drug disposal program within the political subdivision's borders. A drug disposal program that a political subdivision operates or authorizes must adopt policies and procedures similar to those described above, but the program need not obtain approval from DOJ. However, without DOJ approval, the program may not receive pharmaceutical items except by means of in-person delivery within the political subdivision's borders.

Finally, the bill authorizes a person who lawfully possesses a prescription drug, or the person's guardian, trustee, or personal representative, to grant written authorization to certain other persons to destroy the prescription drug. Under the bill, such a written authorization is only valid if the authorization satisfies certain conditions, including that the authorization describes the prescription drug with reasonable specificity and that the authorization and the prescription drug were obtained by the person authorized to destroy the prescription drug without the payment of money or something else of value.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 66.0437 of the statutes is created to read:

2 **66.0437 Drug disposal programs.** (1) In this section, "political subdivision"
3 has the meaning given in s. 165.65 (1) (e).

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

6 **SECTION 2.** 165.65 of the statutes is created to read:

7 **165.65 Drug disposal program.** (1) DEFINITIONS. In this section:

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

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

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

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(c) "Drug disposal program" means a program to receive pharmaceutical items

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and to recycle, destroy, or otherwise dispose of those items.

INS. AA1-1 ✓

INS. AA1-2 ✓

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(d) "Pharmaceutical item" means a drug, as defined in s. 450.01 (10); a

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prescription drug, as defined in s. 450.01 (20); a controlled substance or controlled

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substance analog; a device, as defined in 450.01 (6); or a hypodermic syringe, needle,

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or other object used for administering a drug.

INS. AA1-3 ✓

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

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(2) DEPARTMENT OF JUSTICE AUTHORIZATION TO OPERATE A DRUG DISPOSAL PROGRAM.

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(a) Except as provided under sub. (3), no person may receive pharmaceutical items

INS. AA1-1 ✓

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pursuant to a drug disposal program unless the department of justice grants written

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authorization for that program under par. (b) or the program is authorized under

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federal law.

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(b) The department of justice may, without a hearing, grant written

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authorization to a person to operate a drug disposal program if all of the following

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conditions are satisfied:

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1. The person adopts written policies and procedures that comply with sub. (5).

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The department of justice shall review and either approve or disapprove in writing

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those policies and procedures. The department of justice shall approve the policies

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and procedures if the department of justice determines that the policies and

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procedures do not violate the requirements of this section or any other applicable

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federal or state law, and shall disapprove them otherwise. If the department of

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justice disapproves the policies and procedures, the department of justice shall state

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the reasons for that disapproval in writing to the person. At any time, the person may

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resubmit revised policies and procedures to the department of justice for its review

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and approval under this subdivision.

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SECTION 2

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2. If the drug disposal program will receive pharmaceutical items in any manner other than the transfer of a pharmaceutical item in person to the program by a person that lawfully possesses the 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 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 pharmaceutical items only by means of delivery in person by a person that lawfully possesses the pharmaceutical item, unless the drug disposal program is authorized under federal law to receive 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

INSERT AA1-4

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1 authorizes that program under sub. (2), all political subdivisions within which the
2 drug disposal program operates authorize that program under sub. (3), or the
3 program is authorized under federal law.

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

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

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

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

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

23 2. Legal counsel for the political subdivision, or, at the discretion of the political
24 subdivision, the department of justice if the political subdivision's legal counsel is not
25 an employee of the political subdivision, shall review and either approve or

INSERT AA1-5

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SECTION 2

1 disapprove the policies and procedures for a drug disposal program implemented or
 2 authorized under sub. (3) and any changes to those policies and procedures. Legal
 3 counsel, or the department of justice if appropriate, shall approve the policies and
 4 procedures or changes if it determines that the policies and procedures or changes
 5 do not violate the requirements of this section or any other applicable federal or state
 6 law, and shall disapprove them otherwise. Any approval under this subdivision shall
 7 be in writing. The political subdivision shall provide a copy of the approval and a copy
 8 of the policies and procedures or changes to the policies and procedures to the
 9 department of justice.

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

INS. AA1-6

INS. AA1-7

20

(6) TRANSFER AND RECEIPT OF PHARMACEUTICAL ITEMS. (a) Notwithstanding ss.

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450.03 (1) and 450.11 (7) (g) and (h) and (9) (b), a person that lawfully possesses a

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pharmaceutical item may transfer, and it is not a crime for such a person to transfer,

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the pharmaceutical item to a drug disposal program if the program is authorized

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under sub. (2) or (3) or is authorized under federal law.

INS.
AA1-8

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

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

10 450.01 (23) (n) The operation or implementation of a drug disposal program
11 that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as
12 defined in s. 165.65 (1) (a), or the possession or delivery of a pharmaceutical item, as
13 defined in s. 165.65 (1) (d), within the scope of a drug disposal program that is
14 authorized under s. 165.65 (2) or (3) or is authorized under federal law.

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

16 450.01 (23) (o) The possession or delivery of a prescription drug within the
17 scope of a written authorization under s. 450.115 (3).

18 **SECTION 5.** 450.115 of the statutes is created to read:

19 **450.115 Drug disposal programs and authorizations.** (1) In this section:

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

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



INS. AAI-9

ASSEMBLY BILL 448**SECTION 5**

1 (c) “Trustee” means a person that holds in trust title to or power over property.

2 “Trustee” includes an original, added, or successor trustee.

3 (d) “Ward” means a person for whom a guardian has been appointed.

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

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

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

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

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

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

22 (c) A person who is a competent adult may grant written authorization to that
23 person’s domestic partner under ch. 770 or to another adult who is related to that
24 person by blood, marriage, or adoption within the 3rd degree of kinship as computed

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1 under s. 990.001 (16), for the disposal of a prescription drug that lawfully belongs to
2 that person.

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

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

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

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

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

16 **CHAPTER 961**

17 **SUBCHAPTER III**

18 **REGULATION OF MANUFACTURE,**

19 **DISTRIBUTION AND, DISPENSING,**

20 **AND POSSESSION OF CONTROLLED**

21 **SUBSTANCES**

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

23 961.32 (2) (e) A person actively engaged in the direct operation or
24 implementation of a drug disposal program that is authorized under s. 165.65 (2) or
25 (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

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SECTION 8

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

3 961.335 (1) (a) Upon application the controlled substances board may issue a
4 permit authorizing a person to manufacture, obtain, possess, use, administer, or
5 dispense a controlled substance for purposes of scientific research, instructional
6 activities, chemical analysis, or other special uses, without restriction because of
7 enumeration. No

8 (b) Except as provide in par. (c), no person shall may engage in any such activity
9 described under par. (a) without a permit issued under this section, except that an.

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

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

19 961.335 (1) (c) 1. A person who is actively engaged in the direct operation or
20 implementation of a drug disposal program that is authorized under s. 165.65 (2) or
21 (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), may, without a
22 permit issued under this section, obtain or possess a controlled substance for the
23 purposes of operating and implementing the drug disposal program.

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

4 **SECTION 10.** 961.337 of the statutes is created to read:

5 **961.337 Drug disposal programs.** Nothing in this chapter, or rules
6 promulgated under this chapter, prohibits any of the following:

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

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

16 **SECTION 11. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

(END)

Handwritten annotations: A large circle around the text in line 17. A line with an arrow points from the word "publication" in line 18 down to a box containing "AA2-1". There are two checkmarks to the right of the box.



**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY BILL 448**

January 8, 2014 – Offered by Representative NYGREN.

1 At the locations indicated, amend the bill as follows:

2 ✓✓ 1. Page 3, lines 1 and 9: before “pharmaceutical” insert “household”. AA1-1 AA1-2

3 ✓✓ 2. Page 3, line 2: after “items.” insert “Drug disposal program” does not
4 include a sharps collection station operated in compliance with rules promulgated
5 by the department of natural resources”.

6 ✓✓ 3. Page 3, line 3: delete the material beginning with “(d)” and ending with
7 “drug.” on line 6 and substitute: AA1-3

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

12 a. A drug, as defined in s. 450.01 (10); a prescription drug, as defined in s. 450.01
13 (20); or a controlled substance or controlled substance analog, if the drug,

1 prescription drug, or controlled substance or controlled substance analog is located
 2 in or comes from a place where the individual, a member of the individual's
 3 household, an in-home hospice service, or an adult family home serving fewer than
 4 5 adult members manages the use of the drug, prescription drug, or controlled
 5 substance or controlled substance analog.

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

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

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

15 b. Any item containing elemental mercury.

16 ✓✓ 4. Page 4, lines 1, 2, 3, 6, 20, 21 and 23: before "pharmaceutical" insert
 17 "household". AA1-4

18 ✓✓ 5. Page 5, lines 9, 11 and 12: before "pharmaceutical" insert "household". AA1-5

19 ✓✓ 6. Page 6, line 19: after that line insert:

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

23 1. The location and hours of operation of the drug disposal program.

AA1-6

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

4 3. A description of the household pharmaceutical items the drug disposal
 5 program may receive.”

6 ✓✓ 7. Page 6, line 20: before “PHARMACEUTICAL” insert “HOUSEHOLD”.

AA1-7

7 ✓✓ 8. Page 6, lines 22 and 23: before “pharmaceutical” insert “household”.

AA1-8

8 ✓✓ 9. Page 7, lines 2 and 12: before “pharmaceutical” insert “household”.

AA1-9

9 ✓✓ 10. Page 10, line 8: delete “provide” and substitute “provided”.

AA1-10

10

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa1386/1
MPG:wlj:rs

ASSEMBLY AMENDMENT 2,
TO ASSEMBLY BILL 448

January 8, 2014 – Offered by Representative NYGREN.

1 At the locations indicated, amend the bill as follows:

2 ✓ **1.** Page 11, line 17: delete the material beginning with “the first” and ending
3 with “publication” on line 18 and substitute “July 1, 2015”.

4 (END)

AA 2-1