



State of Wisconsin
2005 - 2006 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 183**

April 6, 2005 - Offered by Representative RHOADES.

1 **AN ACT** *to renumber* 961.437 (2) and 961.49; *to renumber and amend* 961.437
2 (3), 961.437 (4), 961.437 (5) and 961.46; *to amend* 101.10 (title), 101.10 (3) (e),
3 895.555 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d.,
4 939.62 (2m) (d), 948.015 (6), 961.23 (2), 961.23 (4), 961.23 (5), 961.41 (1r),
5 961.437 (title), 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f),
6 111.335 (1) (cs) 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m.,
7 125.12 (4) (ag) 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.22
8 (3) (b), 961.23 (7), 961.23 (8), 961.41 (3j), 961.437 (1) (title), 961.437 (2m),
9 961.437 (3m) (title), 961.453, 961.46 (2), 961.49 (2m), 973.017 (8) (a) 3. and
10 973.017 (8) (c) of the statutes; **relating to:** pseudoephedrine and other
11 materials used to produce methamphetamine, the distribution of
12 methamphetamine to minors, and providing penalties.

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

1 **SECTION 1.** 101.10 (title) of the statutes is amended to read:

2 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
3 **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

4 **SECTION 2.** 101.10 (3) (e) of the statutes is amended to read:

5 101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession
6 of liquid nitrogen, anhydrous ammonia ~~belonging to another~~, or anhydrous ammonia
7 equipment belonging to another, without the other's consent and with intent to
8 deprive the owner permanently of possession of the liquid nitrogen, anhydrous
9 ammonia, or anhydrous ammonia equipment.

10 **SECTION 3.** 101.10 (3) (f) of the statutes is created to read:

11 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
12 belonging to another into the atmosphere. This paragraph does not apply if the
13 owner has authorized the actor to exercise control over the anhydrous ammonia or
14 has consented to its release.

15 **SECTION 4.** 111.335 (1) (cs) 5. of the statutes is created to read:

16 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.437 (2m) with
17 intent to manufacture methamphetamine under that subsection or under a federal
18 law or a law of another state that is substantially similar to s. 961.437 (2m).

19 **SECTION 5.** 125.12 (2) (ag) 5m. of the statutes is created to read:

20 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
21 materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine
22 under that subsection or under a federal law or a law of another state that is
23 substantially similar to s. 961.437 (2m).

24 **SECTION 6.** 125.12 (2) (ag) 6m. of the statutes is created to read:

1 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
2 premises for which the license under this chapter is issued, to possess any of the
3 materials listed in s. 961.437 (2m) with the intent to manufacture
4 methamphetamine.

5 **SECTION 7.** 125.12 (4) (ag) 7m. of the statutes is created to read:

6 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
7 the materials listed in s. 961.437 (2m) with intent to manufacture
8 methamphetamine under that subsection or under a federal law or a law of another
9 state that is substantially similar to s. 961.437 (2m).

10 **SECTION 8.** 125.12 (4) (ag) 8m. of the statutes is created to read:

11 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
12 on the premises for which the license under this chapter is issued, to possess any of
13 the materials listed in s. 961.437 (2m) with the intent to manufacture
14 methamphetamine.

15 **SECTION 9.** 895.555 (title) of the statutes is amended to read:

16 **895.555 (title) Liability exemption; anhydrous ammonia and liquid**
17 **nitrogen.**

18 **SECTION 10.** 895.555 (1) of the statutes is amended to read:

19 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
20 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
21 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal
22 purpose is immune from any civil liability for acts or omissions relating to the
23 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that
24 cause damage or injury to an individual, if that damage or injury occurs during the
25 individual's violation of s. 101.10 (3) (c), (d), ~~or (e)~~, or (f).

1 **SECTION 11.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

2 938.34 **(14s)** (am) (intro.) In addition to any other dispositions imposed under
3 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.437
4 (2m), the court shall order one of the following penalties:

5 **SECTION 12.** 939.32 (1) (g) of the statutes is created to read:

6 939.32 **(1)** (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
7 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

8 **SECTION 13.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

9 939.62 **(2m)** (a) 2m. am. A crime under s. 961.437 (2m).

10 **SECTION 14.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

11 939.62 **(2m)** (a) 2m. d. A crime at any time under federal law or the law of any
12 other state or, prior to April 28, 1994, under the law of this state that is comparable
13 to a crime specified in subd. 2m. a., am., b., or c.

14 **SECTION 15.** 939.62 (2m) (d) of the statutes is amended to read:

15 939.62 **(2m)** (d) If a prior conviction is being considered as being covered under
16 par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
17 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.
18 (b) only if the court determines, beyond a reasonable doubt, that the violation
19 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
20 or 2m. a., am., b., or c. if committed by an adult in this state.

21 **SECTION 16.** 948.015 (6) of the statutes is amended to read:

22 948.015 **(6)** ~~Sections 961.01 (6) and (9) and Section 961.49, relating to~~
23 ~~delivering and distributing offenses involving an intent to deliver or distribute~~
24 ~~controlled substances or controlled substance analogs to children at or near certain~~
25 places.

1 **SECTION 17.** 961.01 (14f) of the statutes is created to read:

2 961.01 (14f) “Methamphetamine precursor” means ephedrine,
3 pseudoephedrine phenylpropanolamine, or any of their salts, isomers, and salts of
4 isomers that are theoretically possible within the specific chemical designation.

5 **SECTION 18.** 961.22 (3) (b) of the statutes is created to read:

6 961.22 (3) (b) Pseudoephedrine. This paragraph does not apply under any of
7 the following circumstances:

- 8 1. The pseudoephedrine is in a product that contains therapeutically
9 significant quantities of another active medicinal ingredient.
- 10 2. The pseudoephedrine is in a liquid or a soft gelatin capsule.
- 11 3. The controlled substances board has determined, by rule, that the
12 pseudoephedrine cannot be used readily in the manufacture of methamphetamine.

13 **SECTION 19.** 961.23 (2) of the statutes is amended to read:

14 961.23 (2) That they be sold at retail only by a registered pharmacist or, if the
15 product is one to which s. 961.22 (3) (b) applies, a person working under the direct
16 supervision of a registered pharmacist when sold in a retail establishment.

17 **SECTION 20.** 961.23 (4) of the statutes is amended to read:

18 961.23 (4) That any person purchasing such a substance at the time of
19 purchase present to the seller that person’s correct name ~~and~~, address, and, if the
20 person is purchasing a product to which s. 961.22 (3) (b) applies, an identification
21 card containing the person’s photograph. The seller shall record the name and
22 address and the name and quantity of the product sold. The purchaser and the seller
23 shall sign the record of this transaction. The giving of a false name or false address
24 by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

25 **SECTION 21.** 961.23 (5) of the statutes is amended to read:

1 961.23 (5) That no person may purchase more than 8 ounces of a product
2 containing opium or more than 4 ounces of a product containing any other schedule
3 V substance other than pseudoephedrine within a 48-hour period without the
4 authorization of a physician, dentist, or veterinarian ~~nor~~.

5 (6) That no person other than a physician, dentist, veterinarian, or pharmacist
6 may possess more than 8 ounces of a product containing opium or more than 4 ounces
7 of a product containing any other schedule V substance ~~be in the possession of any~~
8 ~~person other than a physician, dentist, veterinarian or pharmacist~~ other than
9 pseudoephedrine at any time without the authorization of a physician, dentist, or
10 veterinarian.

11 **SECTION 22.** 961.23 (7) of the statutes is created to read:

12 961.23 (7) That no person other than a physician, dentist, veterinarian, or
13 pharmacist may purchase more than 9 grams of a product to which s. 961.22 (3) (b)
14 applies within a 30-day period without the authorization of a physician, dentist, or
15 veterinarian.

16 **SECTION 23.** 961.23 (8) of the statutes is created to read:

17 961.23 (8) That no person may sell a product to which s. 961.22 (3) (b) applies
18 to a person under 18 years of age.

19 **SECTION 24.** 961.41 (1r) of the statutes is amended to read:

20 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
21 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.437 (2m), an amount
22 includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
23 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
24 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any
25 controlled substance analog of any of these substances together with any compound,

1 mixture, diluent, plant material or other substance mixed or combined with the
2 controlled substance or, controlled substance analog, or methamphetamine
3 precursor. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the
4 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)
5 and includes the weight of any marijuana.

6 **SECTION 25.** 961.41 (3j) of the statutes is created to read:

7 961.41 (3j) PURCHASE OF PSEUDOEPHEDRINE. Whoever, other than a physician,
8 dentist, veterinarian, or pharmacist, purchases within a 30-day period more than
9 9 grams of a product to which s. 961.22 (3) (b) applies from a single seller other than
10 by purchasing the product in person from a pharmacy or pharmacist is guilty of a
11 Class I felony. This subsection does not apply to a purchase that is authorized by a
12 physician, dentist, or veterinarian.

13 **SECTION 26.** 961.437 (title) of the statutes is amended to read:

14 **961.437 (title) ~~Possession and disposal of~~ Materials used in and waste**
15 **produced from manufacture of methamphetamine.**

16 **SECTION 27.** 961.437 (1) (title) of the statutes is created to read:

17 961.437 (1) (title) DEFINITIONS.

18 **SECTION 28.** 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).

19 **SECTION 29.** 961.437 (2m) of the statutes is created to read:

20 961.437 (2m) MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE. Except
21 as authorized by this chapter, any person who possesses a methamphetamine
22 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
23 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
24 methamphetamine is guilty of a Class H felony. Possession of more than 24 grams

1 of methamphetamine precursors shall be prima facie evidence of intent to
2 manufacture methamphetamine.

3 **SECTION 30.** 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and
4 961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

5 961.437 **(3m)** (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person
6 who possesses or disposes of methamphetamine manufacturing waste under all of
7 the following circumstances:

8 2. The methamphetamine manufacturing waste had previously been possessed
9 or disposed of by another person in violation of ~~sub. (2) par. (a)~~.

10 **SECTION 31.** 961.437 (3m) (title) of the statutes is created to read:

11 961.437 **(3m)** (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.

12 **SECTION 32.** 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and
13 961.437 (3m) (c) (intro.), as renumbered, is amended to read:

14 961.437 **(3m)** (c) (intro.) A person who violates ~~sub. (2) par. (a)~~ is subject to the
15 following penalties:

16 **SECTION 33.** 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and
17 amended to read:

18 961.437 **(3m)** (d) Each day of a continuing violation of ~~sub. (2) par. (a) 1.~~ or (b)
19 2. constitutes a separate offense.

20 **SECTION 34.** 961.453 of the statutes is created to read:

21 **961.453 Purchases of pseudoephedrine on behalf of another person.**

22 **(1)** (a) No person may knowingly solicit, hire, direct, employ, or use another to
23 purchase, on behalf of the actor, a product to which s. 961.22 (3) (b) applies if the actor
24 does so with the intent to acquire within a 30-day period more than 9 grams of a
25 product to which s. 961.22 (3) (b) applies.

1 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of
2 a Class I felony.

3 2. If the person who is solicited, hired, directed, employed, or used to purchase
4 the product to which s. 961.22 (3) (b) applies is less than 18 years of age, the actor
5 is guilty of a Class H felony.

6 (2) No person may purchase, on behalf of another, a product to which s. 961.22
7 (3) (b) applies if the actor does so with the intent to facilitate another person's
8 manufacture of methamphetamine. A person who violates this subsection is guilty
9 of a Class I felony.

10 **SECTION 35.** 961.46 of the statutes is renumbered 961.46 (1) and amended to
11 read:

12 961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by
13 distributing or delivering a controlled substance or a controlled substance analog to
14 a person 17 years of age or under who is at least 3 years his or her junior, the
15 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
16 offense may be increased by not more than 5 years.

17 **SECTION 36.** 961.46 (2) of the statutes is created to read:

18 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
19 by distributing or delivering methamphetamine or a controlled substance analog of
20 methamphetamine to a person 17 years of age or under who is at least 2 years his
21 or her junior, the person is guilty of a Class B felony.

22 **SECTION 37.** 961.49 (title) of the statutes is amended to read:

23 **961.49** (title) ~~Distribution of or possession with~~ Offenses involving
24 intent to deliver or distribute a controlled substance on or near certain
25 places.

