



State of Wisconsin  
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2005 SENATE BILL 78**

April 1, 2005 - Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND  
LONG TERM CARE.

1     **AN ACT** *to renumber* 961.22 (3) (a), 961.437, 961.49, 961.61 and 961.62; *to*  
2     *renumber and amend* 961.46; *to amend* 101.10 (title), 101.10 (3) (e), 895.555  
3     (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m)  
4     (d), 961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4), 961.23 (5), 961.41 (1r), 961.49  
5     (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs) 5.,  
6     125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m.,  
7     939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.01 (17m), 961.01 (20c),  
8     961.01 (20d), 961.01 (20e), 961.22 (3) (am), 961.23 (6), 961.23 (8), 961.235,  
9     961.452, 961.46 (2), 961.49 (2m), 961.63, 961.65, 973.017 (8) (a) 3. and 973.017  
10     (8) (c) of the statutes; **relating to:** pseudoephedrine and other materials used  
11     to produce methamphetamine, the distribution of methamphetamine to  
12     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. 961.65 with intent  
17 to manufacture methamphetamine under that subsection or under a federal law or  
18 a law of another state that is substantially similar to s. 961.65.

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. 961.65 with intent to manufacture methamphetamine under  
22 that subsection or under a federal law or a law of another state that is substantially  
23 similar to s. 961.65.

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. 961.65 with the intent to manufacture methamphetamine.

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

5           125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of  
6 the materials listed in s. 961.65 with intent to manufacture methamphetamine  
7 under that subsection or under a federal law or a law of another state that is  
8 substantially similar to s. 961.65.

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

10          125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is  
11 on the premises for which the license under this chapter is issued, to possess any of  
12 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

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

14          **895.555 (title) Liability exemption; anhydrous ammonia and liquid**  
15 **nitrogen.**

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

17          895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person  
18 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.  
19 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal  
20 purpose is immune from any civil liability for acts or omissions relating to the  
21 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that  
22 cause damage or injury to an individual, if that damage or injury occurs during the  
23 individual's violation of s. 101.10 (3) (c), (d), ~~or (e)~~, or (f).

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

1           938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under  
2 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65,  
3 the court shall order one of the following penalties:

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

5           939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is  
6 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

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

8           939.62 (2m) (a) 2m. am. A crime under s. 961.65.

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

10           939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any  
11 other state or, prior to April 28, 1994, under the law of this state that is comparable  
12 to a crime specified in subd. 2m. a., am., b., or c.

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

14           939.62 (2m) (d) If a prior conviction is being considered as being covered under  
15 par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or  
16 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.  
17 (b) only if the court determines, beyond a reasonable doubt, that the violation  
18 relating to that conviction would constitute a felony specified under par. (a) 1m. a.  
19 or 2m. a., am., b., or c. if committed by an adult in this state.

20           **SECTION 16.** 961.01 (14f) of the statutes is created to read:

21           961.01 (14f) “Methamphetamine precursor” means any material, compound,  
22 mixture, or preparation that contains any quantity of ephedrine or pseudoephedrine  
23 or any of their salts, isomers, and salts of isomers but does not include a product to  
24 which sub. (20c) (a) or (b) applies.

25           **SECTION 17.** 961.01 (17m) of the statutes is created to read:

1           961.01 (17m) “Pharmacy assistant” means a person working under the  
2 supervision of a pharmacist.

3           **SECTION 18.** 961.01 (20c) of the statutes is created to read:

4           961.01 (20c) “Pseudoephedrine” does not include a product containing the  
5 chemical pseudoephedrine or any of its salts, isomers, or salts of isomers if any of the  
6 following applies:

7           (a) The product is a pseudoephedrine liquid or gelcap. This paragraph does not  
8 apply if the package containing the product contains more than 360 milligrams of the  
9 chemical pseudoephedrine or any of its salts, isomers, or salts of isomers.

10          (b) The controlled substances board has determined, by rule, that the product  
11 cannot be readily used in the manufacture of methamphetamine.

12          **SECTION 19.** 961.01 (20d) of the statutes is created to read:

13          961.01 (20d) “Pseudoephedrine gelcap” means a soft gelatin capsule that is  
14 intended to be sold at retail and that contains 360 milligrams or less of the chemical  
15 pseudoephedrine or any of its salts, isomers, or salts of isomers.

16          **SECTION 20.** 961.01 (20e) of the statutes is created to read:

17          961.01 (20e) “Pseudoephedrine liquid” means a product that is intended to be  
18 sold at retail, that is a liquid at room temperature, and that contains 360 milligrams  
19 or less of the chemical pseudoephedrine or any of its salts, isomers, or salts of  
20 isomers.

21          **SECTION 21.** 961.22 (3) (a) of the statutes is renumbered 961.22 (3) (b).

22          **SECTION 22.** 961.22 (3) (am) of the statutes is created to read:

23          961.22 (3) (am) Pseudoephedrine.

24          **SECTION 23.** 961.23 (1) of the statutes is amended to read:

1           961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a  
2 medicine, and not for the purpose of evading this chapter.

3           **SECTION 24.** 961.23 (2) of the statutes is amended to read:

4           961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist  
5 or, if the substance is pseudoephedrine, by a pharmacy assistant when sold in a retail  
6 establishment.

7           **SECTION 25.** 961.23 (3) of the statutes is amended to read:

8           961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the  
9 name and address of the establishment on the immediate container of said  
10 preparation.

11          **SECTION 26.** 961.23 (4) of the statutes is amended to read:

12          961.23 (4) ~~That any~~ Any person purchasing such a substance shall, at the time  
13 of purchase, present to the seller that person's correct name and, address, and, if the  
14 person is purchasing pseudoephedrine, an identification card containing the  
15 person's photograph. The seller shall record the name and address and the name and  
16 quantity of the product sold. The purchaser and either the seller or, if the substance  
17 is pseudoephedrine and is being sold by a pharmacy assistant, the pharmacist  
18 supervising the seller shall sign the record of this transaction. The giving of a false  
19 name or false address by the purchaser shall be prima facie evidence of a violation  
20 of s. 961.43 (1) (a).

21          **SECTION 27.** 961.23 (5) of the statutes is amended to read:

22          961.23 (5) ~~That no~~ No person may purchase more than 8 ounces of a product  
23 containing opium or more than 4 ounces of a product containing any other schedule  
24 V substance other than pseudoephedrine within a 48-hour period without the  
25 authorization of a physician, dentist, or veterinarian ~~nor~~.

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

7           **SECTION 28.** 961.23 (6) of the statutes is created to read:

8           961.23 (6) No person other than a physician, dentist, veterinarian, or  
9           pharmacist may purchase more than 6 grams of a product containing  
10          pseudoephedrine within a 30-day period without the authorization of a physician,  
11          dentist, or veterinarian.

12          **SECTION 29.** 961.23 (8) of the statutes is created to read:

13          961.23 (8) No person may sell pseudoephedrine to a person under 18 years of  
14          age, and no person under 18 years of age may purchase pseudoephedrine.

15          **SECTION 30.** 961.235 of the statutes is created to read:

16          **961.235 Records relating to pseudoephedrine sales.** Records required  
17          under s. 961.23 (4) with respect to the sale of pseudoephedrine may be kept in either  
18          a paper or electronic format and shall be maintained by the pharmacy for at least 5  
19          years. Only a pharmacist or a law enforcement officer may have access to  
20          information recorded under s. 961.23 (4) with respect to the sale of pseudoephedrine.

21          **SECTION 31.** 961.41 (1r) of the statutes is amended to read:

22          961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under  
23          s. 961.49 (2) (b), 1999 stats., ~~and~~ subs. (1) and (1m), and s. 961.65, an amount includes  
24          the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid  
25          diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,

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

8 **SECTION 32.** 961.437 of the statutes is renumbered 961.67.

9 **SECTION 33.** 961.452 of the statutes is created to read:

10 **961.452 Defenses in certain schedule V prosecutions.** (1) A person who  
11 proves all of the following by a preponderance of the evidence has a defense to  
12 prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition  
13 specified in s. 961.23 with respect to the person's distribution or delivery of  
14 pseudoephedrine:

15 (a) The person did not knowingly or recklessly violate the condition under s.  
16 961.23.

17 (b) The person reported his or her own violation of the condition under s. 961.23  
18 to a law enforcement officer in the county or municipality in which the violation  
19 occurred within 30 days after the violation.

20 (2) A seller who proves all of the following by a preponderance of the evidence  
21 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's  
22 violation of a condition specified in s. 961.23 with respect to the person's distribution  
23 or delivery of pseudoephedrine:

24 (a) The person did not knowingly or recklessly violate the condition under s.  
25 961.23.



1           (b) The acts or omissions constituting the violation of the condition under s.  
2   961.23 were the acts or omissions of one or more of the person's employees.

3           (c) The person provided training to each of those employees regarding the  
4   restrictions imposed under s. 961.23 on the delivery of pseudoephedrine.

5           **(3)** A person who proves all of the following by a preponderance of the evidence  
6   has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):

7           (a) The purchaser presented an identification card that contained a name or  
8   address other than the person's own.

9           (b) The appearance of the purchaser was such that an ordinary and prudent  
10   person would believe that the purchaser was the person depicted in the photograph  
11   contained in that identification card.

12          (c) The sale was made in good faith, in reasonable reliance on the identification  
13   card and appearance of the purchaser, and in the belief that the name and address  
14   of the purchaser were as listed on the identification card.

15          **(4)** A person who proves all of the following by a preponderance of the evidence  
16   has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):

17          (a) The purchaser presented an identification card that indicated that he or she  
18   was 18 years of age or older.

19          (b) The appearance of the purchaser was such that an ordinary and prudent  
20   person would believe that the purchaser was 18 years of age or older.

21          (c) The sale was made in good faith, in reasonable reliance on the identification  
22   card and appearance of the purchaser, and in the belief that the purchaser was 18  
23   years of age or older.

24          **SECTION 34.** 961.46 of the statutes is renumbered 961.46 (1) and amended to  
25   read:

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

6           **SECTION 35.** 961.46 (2) of the statutes is created to read:

7           961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)  
8 by distributing or delivering methamphetamine or a controlled substance analog of  
9 methamphetamine to a person 17 years of age or under who is at least 2 years his  
10 or her junior, the person is guilty of a Class I felony.

11           **SECTION 36.** 961.49 (title) of the statutes is amended to read:

12           **961.49** (title) ~~**Distribution of or possession with**~~ **Offenses involving**  
13 **intent to deliver or distribute a controlled substance on or near certain**  
14 **places.**

15           **SECTION 37.** 961.49 of the statutes is renumbered 961.49 (1m).

16           **SECTION 38.** 961.49 (2m) of the statutes is created to read:

17           961.49 (2m) If any person violates s. 961.65 with intent to deliver or distribute  
18 methamphetamine or a controlled substance analog of methamphetamine and the  
19 delivery, distribution, or possession takes place under any of the circumstances listed  
20 under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime  
21 may be increased by 5 years.

22           **SECTION 39.** 961.61 of the statutes is renumbered 961.003.

23           **SECTION 40.** 961.62 of the statutes is renumbered 961.005.

24           **SECTION 41.** 961.63 of the statutes is created to read:

**961.63 Delivery of pseudoephedrine liquids and gelcaps. (1)**

RESTRICTIONS ON DELIVERY. The delivery of pseudoephedrine liquids and gelcaps is subject to the following conditions:

(a) They may be delivered and sold only in good faith as a medicine and not for the purpose of evading this section.

(b) When sold in a retail establishment, their containers shall bear the name and address of the establishment.

(c) Any person purchasing them at retail shall present to the seller, at the time of the purchase, the person's correct name and address and an identification card containing the person's photograph and date of birth. The seller shall record the person's name and address and the name and quantity of the product sold. The purchaser shall sign the record of this transaction. The giving of a false name or false address by the purchaser or the use of an identification card containing false information by the purchaser shall be prima facie evidence of a violation of sub. (3)

(b).

(d) No person other than a physician, dentist, veterinarian, or pharmacist may purchase more than one package of either pseudoephedrine liquid or pseudoephedrine gelcaps at retail within a 24-hour period.

(e) No retailer or employee of a retailer may sell more than one package of either pseudoephedrine liquid or pseudoephedrine gelcaps within a 24-hour period to any other person, other than to a physician, dentist, veterinarian, or pharmacist.

(f) No person may sell them to a person under 18 years of age, and no person under 18 years of age may purchase them.

1 (g) No person may sell pseudoephedrine liquid or pseudoephedrine gelcaps at  
2 retail except from a locked cabinet or behind a sales counter where the public is  
3 unable to reach the product and where the public is not permitted.

4 **(2) OFFENSES AND PENALTIES.** (a) Any person who violates sub. (1) is guilty of  
5 a Class I felony.

6 (b) Any person who acquires or obtains possession of pseudoephedrine liquid  
7 or pseudoephedrine gelcaps by misrepresentation, fraud, forgery, deception, or  
8 subterfuge is guilty of a Class H felony.

9 **(3) DEFENSES.** (a) A person who proves all of the following by a preponderance  
10 of the evidence has a defense to prosecution under sub. (2) (a):

11 1. The person did not knowingly or recklessly violate sub. (1).

12 2. The person reported his or her own violation of sub. (1) to a law enforcement  
13 officer in the county or municipality in which the violation occurred within 30 days  
14 after the violation.

15 (b) A person who proves all of the following by a preponderance of the evidence  
16 has a defense to prosecution under sub. (2) (a):

17 1. The person did not knowingly or recklessly violate sub. (1).

18 2. The acts or omissions constituting the violation of sub. (1) were the acts or  
19 omissions of one or more of the person's employees.

20 3. The person provided training to each of those employees regarding the  
21 restrictions imposed under sub. (1) on the delivery of pseudoephedrine liquid or  
22 pseudoephedrine gelcaps.

23 (c) A person who proves all of the following by a preponderance of the evidence  
24 has a defense to prosecution under sub. (2) (a) for a violation of sub. (1) (e):

1           1. The purchaser presented an identification card that contained a name or  
2 address other than the person's own.

3           2. The appearance of the purchaser was such that an ordinary and prudent  
4 person would believe that the purchaser was the person depicted in the photograph  
5 contained in that identification card.

6           3. The sale was made in good faith, in reasonable reliance on the identification  
7 card and appearance of the purchaser, and in the belief that the name and address  
8 of the purchaser were as listed on the identification card.

9           (d) A person who proves all of the following by a preponderance of the evidence  
10 has a defense to prosecution under sub. (2) (a) for a violation of sub. (1) (f):

11           1. The purchaser presented an identification card that indicated that he or she  
12 was 18 years of age or older.

13           2. The appearance of the purchaser was such that an ordinary and prudent  
14 person would believe that the purchaser was 18 years of age or older.

15           3. The sale was made in good faith, in reasonable reliance on the identification  
16 card and appearance of the purchaser, and in the belief that the purchaser was 18  
17 years of age or older.

18           **(4) RECORD-KEEPING REQUIREMENTS.** Records required under sub. (1) (c) may be  
19 kept in either a paper or electronic format and shall be maintained by the retailer  
20 for at least 5 years. Only the retailer or a law enforcement officer may have access  
21 to information recorded under sub. (1) (c).

22           **SECTION 42.** 961.65 of the statutes is created to read:

23           **961.65 Possessing materials for manufacturing methamphetamine.**

24 Except as authorized by this chapter, any person who possesses a methamphetamine  
25 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous

1 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture  
2 methamphetamine is guilty of a Class H felony. Possession of more than 8 grams of  
3 methamphetamine precursors shall be prima facie evidence of intent to manufacture  
4 methamphetamine.

5 **SECTION 43.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

6 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

7 **SECTION 44.** 973.017 (8) (a) 3. of the statutes is created to read:

8 973.017 (8) (a) 3. When making a sentencing decision concerning a person  
9 convicted of violating s. 961.65, the court shall consider as an aggravating factor the  
10 fact that the person intended to deliver or distribute methamphetamine or a  
11 controlled substance analog of methamphetamine to a prisoner within the precincts  
12 of any prison, jail, or house of correction.

13 **SECTION 45.** 973.017 (8) (c) of the statutes is created to read:

14 973.017 (8) (c) When making a sentencing decision concerning a person  
15 convicted of violating s. 961.65, the court shall consider as an aggravating factor the  
16 fact that the person intended to deliver or distribute methamphetamine or a  
17 controlled substance analog of methamphetamine and that the person knowingly  
18 used a public transit vehicle during the violation.

19 **SECTION 46. Effective dates.** This act takes effect on the day after publication,  
20 except as follows:

21 (1) The treatment of sections 961.22 (3) (am), 961.23 (1) to (8), and 961.63 of the  
22 statutes takes effect on the first day of the 4th month beginning after publication.

23 **(END)**