



**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     **961.535 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:

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.

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. d. 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 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 defined in s. 893.55 (4) (a).

17 3. Punitive damages.

18 4. Notwithstanding s. 814.04 (1), 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:

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 subsection 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 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. 814.04 (1), reasonable attorney fees.

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

20           **(4)** (a) Two or more persons may join as plaintiffs in an action under 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 defendants in an action under this  
25 section if those persons are liable under this section to at least one plaintiff.

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).

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

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 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.

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**(END)**