



**SENATE SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 185**

March 29, 2000 – Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.

1     **AN ACT to amend** 139.87 (2), 139.89, 139.95 (1), 938.34 (14t), 940.02 (2) (a)  
2           (intro.), 940.02 (2) (a) 3., 940.02 (2) (b), 961.46 (3), 961.49 (2) (a) (intro.), 961.492  
3           (1) and 961.495; **to repeal and recreate** 139.95 (2), 139.95 (3), 961.41 (1) (i),  
4           961.41 (1m) (i) and 961.41 (2) (c); and **to create** 139.88 (3), 961.41 (1) (im),  
5           961.41 (1m) (im), 961.41 (2) (cm) and 961.55 (6m) of the statutes; **relating to:**  
6           the controlled substances ketamine and flunitrazepam and providing  
7           penalties.

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

8           **SECTION 1.** 139.87 (2) of the statutes is amended to read:  
9           139.87 (2) “Dealer” means a person who in violation of ch. 961 possesses,  
10          manufactures, produces, ships, transports, delivers, distributes, imports, sells or  
11          transfers to another person more than 42.5 grams of material containing

1 tetrahydrocannabinols, more than 5 plants containing tetrahydrocannabinols, more  
2 than 14 grams of mushrooms containing psilocin or psilocybin, more than 100  
3 milligrams of any material containing lysergic acid diethylamide ~~or~~, more than 7  
4 grams of any other schedule I or schedule II controlled substance or of a controlled  
5 substance analog of a schedule I or schedule II controlled substance or more than 7  
6 grams of ketamine or flunitrazepam. “Dealer” does not include a person who lawfully  
7 possesses a controlled substance or controlled substance analog.

8 **SECTION 2.** 139.88 (3) of the statutes is created to read:

9 139.88 (3) Per gram or part of a gram of ketamine or flunitrazepam, whether  
10 pure or impure, measured when in the dealer’s possession, \$200.

11 **SECTION 3.** 139.89 of the statutes is amended to read:

12 **139.89 Proof of payment.** The department shall create a uniform system of  
13 providing, affixing and displaying stamps, labels or other evidence that the tax under  
14 s. 139.88 has been paid. Stamps or other evidence of payment shall be sold at face  
15 value. No dealer may possess any schedule I controlled substance ~~or~~, schedule II  
16 controlled substance or ketamine or flunitrazepam unless the tax under s. 139.88 has  
17 been paid on it, as evidenced by a stamp or other official evidence issued by the  
18 department. The tax under this subchapter is due and payable immediately upon  
19 acquisition or possessing of the schedule I controlled substance ~~or~~, schedule II  
20 controlled substance or ketamine or flunitrazepam in this state, and the department  
21 at that time has a lien on all of the taxpayer’s property. Late payments are subject  
22 to interest at the rate of 1% per month or part of a month. No person may transfer  
23 to another person a stamp or other evidence of payment.

24 **SECTION 4.** 139.95 (1) of the statutes is amended to read:

1           139.95 (1) Any dealer who possesses a schedule I controlled substance ~~or, a~~  
2 schedule II controlled substance or ketamine or flunitrazepam that does not bear  
3 evidence that the tax under s. 139.88 has been paid shall pay, in addition to the tax  
4 under s. 139.88, a penalty equal to the tax due. The department shall collect  
5 penalties under this subchapter in the same manner as it collects the tax under this  
6 subchapter.

7           **SECTION 5.** 139.95 (2) of the statutes, as affected by 1997 Wisconsin Act 283,  
8 is repealed and recreated to read:

9           139.95 (2) A dealer who possesses a schedule I controlled substance, a schedule  
10 II controlled substance or ketamine or flunitrazepam that does not bear evidence  
11 that the tax under s. 139.88 has been paid may be fined not more than \$10,000 or  
12 imprisoned for not more than 7 years and 6 months or both.

13           **SECTION 6.** 139.95 (3) of the statutes, as affected by 1997 Wisconsin Act 283,  
14 is repealed and recreated to read:

15           139.95 (3) Any person who falsely or fraudulently makes, alters or counterfeits  
16 any stamp or procures or causes the same to be done or who knowingly utters,  
17 publishes, passes or tenders as true any false, altered or counterfeit stamp or who  
18 affixes a counterfeit stamp to a schedule I controlled substance, a schedule II  
19 controlled substance or ketamine or flunitrazepam or who possesses a schedule I  
20 controlled substance, a schedule II controlled substance or ketamine or  
21 flunitrazepam to which a false, altered or counterfeit stamp is affixed may be fined  
22 not more than \$10,000 or imprisoned for not less than one year nor more than 15  
23 years or both.

24           **SECTION 7.** 938.34 (14t) of the statutes is amended to read:

1           **938.34 (14t)** POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE  
2 ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under  
3 a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled  
4 substance included in schedule I or II under ch. 961 ~~or~~, a controlled substance analog  
5 of a controlled substance included in schedule I or II under ch. 961 or ketamine or  
6 flunitrazepam while in or on the premises of a scattered-site public housing project,  
7 as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state,  
8 county, city, village or town park, a jail or correctional facility, as defined in s. 961.01  
9 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming  
10 pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a  
11 community center, while in or on or otherwise within 1,000 feet of any private or  
12 public school premises or while in or on or otherwise within 1,000 feet of a school bus,  
13 as defined in s. 340.01 (56), the court shall require that the juvenile participate for  
14 100 hours in a supervised work program or other community service work under sub.  
15 (5g).

16           **SECTION 8.** 940.02 (2) (a) (intro.) of the statutes is amended to read:

17           940.02 (2) (a) (intro.) By manufacture, distribution or delivery, in violation of  
18 s. 961.41, of a controlled substance included in schedule I or II under ch. 961 ~~or~~, of  
19 a controlled substance analog of a controlled substance included in schedule I or II  
20 under ch. 961 or of ketamine or flunitrazepam, if another human being uses the  
21 controlled substance or controlled substance analog and dies as a result of that use.

22 This paragraph applies:

23           **SECTION 9.** 940.02 (2) (a) 3. of the statutes is amended to read:

24           940.02 (2) (a) 3. To any distribution or delivery described in this paragraph,  
25 regardless of whether the distribution or delivery is made directly to the human

1 being who dies. If possession of the controlled substance included in schedule I or  
2 II under ch. 961 ~~or~~ of the controlled substance analog of the controlled substance  
3 included in schedule I or II under ch. 961 or of the ketamine or flunitrazepam is  
4 transferred more than once prior to the death as described in this paragraph, each  
5 person who distributes or delivers the controlled substance or controlled substance  
6 analog in violation of s. 961.41 is guilty under this paragraph.

7 **SECTION 10.** 940.02 (2) (b) of the statutes is amended to read:

8 940.02 (2) (b) By administering or assisting in administering a controlled  
9 substance included in schedule I or II under ch. 961 ~~or~~, a controlled substance analog  
10 of a controlled substance included in schedule I or II of ch. 961 or ketamine or  
11 flunitrazepam, without lawful authority to do so, to another human being and that  
12 human being dies as a result of the use of the substance. This paragraph applies  
13 whether the human being dies as a result of using the controlled substance or  
14 controlled substance analog by itself or with any compound, mixture, diluent or other  
15 substance mixed or combined with the controlled substance or controlled substance  
16 analog.

17 **SECTION 11.** 961.41 (1) (i) of the statutes, as affected by 1997 Wisconsin Act 283,  
18 is repealed and recreated to read:

19 961.41 (1) (i) Except as provided in par. (im), a substance included in schedule  
20 IV, may be fined not more than \$10,000 or imprisoned for not more than 4 years and  
21 6 months or both.

22 **SECTION 12.** 961.41 (1) (im) of the statutes is created to read:

23 961.41 (1) (im) Flunitrazepam, may be fined not more than \$15,000 or  
24 imprisoned for not more than 7 years and 6 months or both.

1           **SECTION 13.** 961.41 (1m) (i) of the statutes, as affected by 1997 Wisconsin Act  
2 283, is repealed and recreated to read:

3           961.41 **(1m)** (i) Except as provided in par. (im), a substance included in  
4 schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 4  
5 years and 6 months or both.

6           **SECTION 14.** 961.41 (1m) (im) of the statutes is created to read:

7           961.41 **(1m)** (im) Flunitrazepam, may be fined not more than \$15,000 or  
8 imprisoned for not more than 7 years and 6 months or both.

9           **SECTION 15.** 961.41 (2) (c) of the statutes, as affected by 1997 Wisconsin Act 283,  
10 is repealed and recreated to read:

11           961.41 **(2)** (c) Except as provided in par. (cm), a counterfeit substance included  
12 in schedule IV, may be fined not more than \$10,000 or imprisoned for not more than  
13 4 years and 6 months or both.

14           **SECTION 16.** 961.41 (2) (cm) of the statutes is created to read:

15           961.41 **(2)** (cm) A counterfeit substance which is flunitrazepam, may be fined  
16 not more than \$15,000 or imprisoned for not more than 7 years and 6 months or both.

17           **SECTION 17.** 961.46 (3) of the statutes, as affected by 1999 Wisconsin Act ....  
18 (Assembly Bill 318), is amended to read:

19           961.46 **(3)** If any person 17 years of age or over violates s. 961.41 (1) (cm), (d),  
20 (e), (em), (f), (g) ~~or~~, (h) or (im) by distributing or delivering cocaine, cocaine base,  
21 heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin,  
22 amphetamine, methamphetamine, methcathinone, flunitrazepam or any form of  
23 tetrahydrocannabinols or a controlled substance analog of any of these substances  
24 to a person 17 years of age or under who is at least 3 years his or her junior, any

1 applicable minimum and maximum fines and minimum and maximum periods of  
2 imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) ~~or~~ (h) or (im) are doubled.

3 **SECTION 18.** 961.49 (2) (a) (intro.) of the statutes, as affected by 1999 Wisconsin  
4 Act .... (Senate Bill 146), is amended to read:

5 961.49 (2) (a) (intro.) Except as provided in par. (b), the court shall sentence a  
6 person as provided in par. (am) if the person violates s. 961.41 (1) by delivering or  
7 distributing, or violates s. 961.41 (1m) by possessing with intent to deliver or  
8 distribute, a controlled substance included in schedule I or II ~~or~~ a controlled  
9 substance analog of a controlled substance included in schedule I or II or ketamine  
10 or flunitrazepam under any of the following circumstances:

11 **SECTION 19.** 961.492 (1) of the statutes is amended to read:

12 961.492 (1) The violation of s. 961.41 (1) or (1m) involves the distribution or  
13 delivery or the possession, with intent to distribute or deliver, of any controlled  
14 substance included in schedule I or II ~~or~~ of a controlled substance analog of any  
15 controlled substance included in schedule I or II or of ketamine or flunitrazepam.

16 **SECTION 20.** 961.495 of the statutes is amended to read:

17 **961.495 Possession or attempted possession of a controlled substance**  
18 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or  
19 attempting to possess a controlled substance included in schedule I or II ~~or~~ a  
20 controlled substance analog of a controlled substance included in schedule I or II or  
21 ketamine or flunitrazepam while in or on the premises of a scattered-site public  
22 housing project, while in or on or otherwise within 1,000 feet of a state, county, city,  
23 village or town park, a jail or correctional facility, a multiunit public housing project,  
24 a swimming pool open to members of the public, a youth center or a community  
25 center, while in or on or otherwise within 1,000 feet of any private or public school

1 premises or while in or on or otherwise within 1,000 feet of a school bus, as defined  
2 in s. 340.01 (56), the court shall, in addition to any other penalties that may apply  
3 to the crime, impose 100 hours of community service work for a public agency or a  
4 nonprofit charitable organization. The court shall ensure that the defendant is  
5 provided a written statement of the terms of the community service order and that  
6 the community service order is monitored. Any organization or agency acting in good  
7 faith to which a defendant is assigned pursuant to an order under this section has  
8 immunity from any civil liability in excess of \$25,000 for acts or omissions by or  
9 impacting on the defendant.

10 **SECTION 21.** 961.55 (6m) of the statutes is created to read:

11 961.55 (6m) Flunitrazepam or ketamine that is possessed, transferred, sold,  
12 offered for sale or attempted to be possessed in violation of this chapter is contraband  
13 and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine  
14 that is seized or comes into the possession of the state, the owner of which is  
15 unknown, is contraband and shall be summarily forfeited to the state.

16 **SECTION 22. Initial applicability.**

17 (1) This act first applies to acts in violation of chapter 961 of the statutes that  
18 occur on the effective date of this subsection.

19 (END)