



State of Wisconsin
2013 - 2014 LEGISLATURE



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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 HARS DORF, 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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1 (c) "Drug disposal program" means a program to receive pharmaceutical items
2 and to recycle, destroy, or otherwise dispose of those items.

3 (d) "Pharmaceutical item" means a drug, as defined in s. 450.01 (10); a
4 prescription drug, as defined in s. 450.01 (20); a controlled substance or controlled
5 substance analog; a device, as defined in 450.01 (6); or a hypodermic syringe, needle,
6 or other object used for administering a drug.

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

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

9 (a) Except as provided under sub. (3), no person may receive pharmaceutical items
10 pursuant to a drug disposal program unless the department of justice grants written
11 authorization for that program under par. (b) or the program is authorized under
12 federal law.

13 (b) The department of justice may, without a hearing, grant written
14 authorization to a person to operate a drug disposal program if all of the following
15 conditions are satisfied:

16 1. The person adopts written policies and procedures that comply with sub. (5).
17 The department of justice shall review and either approve or disapprove in writing
18 those policies and procedures. The department of justice shall approve the policies
19 and procedures if the department of justice determines that the policies and
20 procedures do not violate the requirements of this section or any other applicable
21 federal or state law, and shall disapprove them otherwise. If the department of
22 justice disapproves the policies and procedures, the department of justice shall state
23 the reasons for that disapproval in writing to the person. At any time, the person may
24 resubmit revised policies and procedures to the department of justice for its review
25 and approval under this subdivision.

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1 2. If the drug disposal program will receive pharmaceutical items in any
2 manner other than the transfer of a pharmaceutical item in person to the program
3 by a person that lawfully possesses the pharmaceutical item, the person
4 demonstrates to the satisfaction of the department of justice that those transfers will
5 comply with any federal or state law applicable to the transportation and delivery
6 of pharmaceutical items.

7 (c) A person may not revise policies and procedures approved by the
8 department of justice under par. (b) 1. unless the department of justice approves the
9 revisions under par. (b) 1.

10 (d) Any determination or action by the department of justice under par. (b) or
11 (c) is not subject to judicial review.

12 **(3) AUTHORIZATION BY A POLITICAL SUBDIVISION TO OPERATE A DRUG DISPOSAL**
13 PROGRAM. A political subdivision may operate or the governing body of a political
14 subdivision may grant written authorization for a person to operate a drug disposal
15 program only if all of the following apply:

16 (a) The political subdivision or the authorized person operates the drug
17 disposal program only within the boundaries of the political subdivision, except as
18 provided under sub. (4).

19 (b) The applicable requirements under sub. (5) are satisfied.

20 (c) The drug disposal program receives pharmaceutical items only by means
21 of delivery in person by a person that lawfully possesses the pharmaceutical item,
22 unless the drug disposal program is authorized under federal law to receive
23 pharmaceutical items by other means.

24 **(4) MULTIJURISDICTIONAL DRUG DISPOSAL PROGRAM.** A drug disposal program may
25 operate within more than one political subdivision if the department of justice

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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

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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.

20 **(6) TRANSFER AND RECEIPT OF PHARMACEUTICAL ITEMS.** (a) Notwithstanding ss.
21 450.03 (1) and 450.11 (7) (g) and (h) and (9) (b), a person that lawfully possesses a
22 pharmaceutical item may transfer, and it is not a crime for such a person to transfer,
23 the pharmaceutical item to a drug disposal program if the program is authorized
24 under sub. (2) or (3) or is authorized under federal law.

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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.

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

"Trustee" includes an original, added, or successor trustee.

(d) "Ward" means a person for whom a guardian has been appointed.

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

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

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

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

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

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

(c) A person who is a competent adult may grant written authorization to that person's domestic partner under ch. 770 or to another adult who is related to that 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:

CHAPTER 961**SUBCHAPTER III****REGULATION OF MANUFACTURE,****DISTRIBUTION ~~AND~~, DISPENSING,****AND POSSESSION OF CONTROLLED****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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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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2. A person who is permitted under federal law to dispose of a controlled substance may, without a permit issued under this section, possess the controlled substance for the purpose of disposing of the controlled substance.

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

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

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

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

SECTION 11. Effective date.

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

(END)