



1997 ASSEMBLY BILL 387

May 27, 1997 - Introduced by Representatives R. POTTER, KRUSICK, OTT, DOBYNS, KELSO, LADWIG, SCHNEIDER, URBAN, BAUMGART, HUBER, PLALE and L. YOUNG, cosponsored by Senators GROBSCHMIDT, ROESSLER and PLACHE, by request of the International Association of Arson Investigators, and Juvenile Firesetters Task Force. Referred to Committee on Government Operations.

1 **AN ACT to amend** 938.343 (2); and **to create** 167.09, 778.25 (1) (a) 2m. and
2 938.343 (11) of the statutes; **relating to:** possession of ignition devices by
3 minors and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits the possession of matches, lighters and other ignition devices by persons under the age of 18 unless the person is under the supervision of an adult. It also prohibits the sale, distribution or giving away of these ignition devices to persons under the age of 18. The bill imposes a forfeiture for a violation of these prohibitions and creates procedures for the seizure of these ignition devices as evidence for prosecution of these violations.

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:

4 **SECTION 1.** 167.09 of the statutes is created to read:
5 **167.09 Use of ignition devices by minors. (1) DEFINITION.** In this section:
6 (a) "Identification card" means any of the following:

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1 1. A license containing a photograph issued under ch. 343.

2 2. An identification card issued under s. 343.50.

3 (b) "Ignition device" means a match, lighter or any other device designed to
4 light a flame.

5 (c) Notwithstanding s. 990.01 (20), "minor" means any person under the age
6 of 18 years.

7 (d) "Supervision by an adult" means within sight of an adult and under
8 continuous verbal direction or control without the aid of any electronic
9 telecommunication device.

10 **(2) POSSESSION.** No minor may possess an ignition device unless the minor is
11 under the supervision of an adult.

12 **(3) SALES AND DISTRIBUTION.** (a) No person may sell an ignition device to a minor.

13 (b) No seller or manufacturer of ignition devices may give, deliver or make
14 accessible an ignition device to a minor.

15 (c) No owner of a place of business may make ignition devices accessible to
16 minors at the place of business.

17 **(4) DEFENSE.** Proof of all of the following facts by a person who allegedly sold,
18 gave or distributed an ignition device to a minor is a defense to any prosecution for
19 a violation of sub. (3) (a) or (b):

20 (a) That the purchaser falsely represented that he or she had attained the age
21 of 18 and presented an identification card.

22 (b) That the appearance of the purchaser was such that an ordinary and
23 prudent person would believe that the purchaser had attained the age of 18.

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1 (c) That the sale was made in good faith, in reasonable reliance on the
2 identification card and appearance of the purchaser and in the belief that the
3 purchaser had attained the age of 18.

4 (5) ENFORCEMENT; SEIZURES. (a) A law enforcement officer may seize an ignition
5 device that is possessed by a minor in violation of sub. (2). The law enforcement
6 officer or agency shall give a receipt as soon as practicable to the person from whose
7 possession the ignition device is taken and shall keep the ignition device in safe
8 custody. Failure to give such receipt shall not render the evidence seized
9 inadmissible upon a trial.

10 (b) Any person claiming the right to possession of an ignition device seized
11 under par. (a) may apply for its return to the circuit court for the county in which the
12 property was seized. Upon receipt of an application, the court shall order that notice
13 as the circuit court determines to be adequate be given the district attorney and all
14 persons who have or may have an interest in the ignition device and shall hold a
15 hearing to hear all claims for possession of the ignition device. If the right to
16 possession is proved to the court's satisfaction, it shall order the ignition device to be
17 returned once any of the following applies:

18 1. The ignition device is not needed as evidence or, if needed, satisfactory
19 arrangements can be made for its return for subsequent use as evidence.

20 2. All proceedings in which the ignition device may be required have been
21 completed.

22 (c) Unless the court enters an order under par. (b), the law enforcement officer
23 or agency shall do one of the following once the ignition device is no longer required
24 for evidence or for use in any further investigation:

25 1. Return the ignition device to the person from whom it was seized.

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1 2. Safely dispose of the ignition device.

2 **(6) PENALTIES; COURT ORDERS.** (a) A person who violates sub. (2) shall be subject
3 to the following:

4 (b) A person who violates sub. (3) shall be subject to a forfeiture of \$200.

5 1. For a first violation under sub. (2), the court shall order the person to
6 complete any education course on fire safety that the court finds to be appropriate.
7 If the court does not find an appropriate education course, the court shall impose a
8 forfeiture of \$100.

9 2. For a 2nd or subsequent violation under sub (2) or if a person fails to
10 satisfactorily complete an education course on fire safety ordered by the court, the
11 court shall impose a forfeiture of \$100.

12 **SECTION 2.** 778.25 (1) (a) 2m. of the statutes is created to read:

13 778.25 (1) (a) 2m. Under s. 167.09.

14 **SECTION 3.** 938.343 (2) of the statutes is amended to read:

15 938.343 (2) Impose a forfeiture not to exceed the maximum forfeiture that may
16 be imposed on an adult for committing that violation or, if the violation is only
17 applicable to a person under 18 years of age, \$50, except as provided in par. (11). Any
18 such order shall include a finding that the juvenile alone is financially able to pay
19 and shall allow up to 12 months for the payment. If a juvenile fails to pay the
20 forfeiture, the court may suspend any license issued under ch. 29 or suspend the
21 juvenile's operating privilege as defined in s. 340.01 (40), for not less than 30 days
22 nor more than 5 years. The court shall immediately take possession of the suspended
23 license and forward it to the department which issued the license, together with the
24 notice of suspension clearly stating that the suspension is for failure to pay a
25 forfeiture imposed by the court. If the forfeiture is paid during the period of

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1 suspension, the court shall immediately notify the department, which will thereupon
2 return the license to the person.

3 **SECTION 4.** 938.343 (11) of the statutes is created to read:

4 938.343 (11) If the violation is the first violation under s. 167.09 (2), order the
5 juvenile to complete any education course on fire safety that the court finds to be
6 appropriate. If the court does not find an appropriate education course, the court
7 shall impose a forfeiture of \$100. For a 2nd or subsequent violation under s. 167.09
8 (2) or if a juvenile fails to satisfactorily complete an education course on fire safety
9 ordered by the court, the court shall impose a forfeiture of \$100.

10 (END)