



2005 ASSEMBLY BILL 878

December 9, 2005 – Introduced by Representatives MOLEPSKE, GUNDERSON, BLACK, LOTHIAN, SHERMAN, SEIDEL, HINES, OTT and KRAWCZYK, cosponsored by Senator BROWN. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 23.50 (1), 23.53 (1), 29.931 (2) (a), 110.07 (1) (a) 1. and 3., 110.07
2 (1) (b), 165.755 (1) (b), 287.81 (title), 299.93 (1), 299.95, 302.46 (1) (a), 345.11
3 (1u), 345.20 (2) (g), 757.05 (1) (a), 814.85 (1) (a) and 814.86 (1); and **to create**
4 60.24 (3) (vm), 287.81 (1) (as), 287.81 (4) and (5), 289.97 (2) and 299.93 (1m) of
5 the statutes; **relating to:** open burning of solid waste, illegal storage or
6 disposal of waste tires, and providing a penalty.

Analysis by the Legislative Reference Bureau

Open burning

Under current law, the Department of Natural Resources (DNR) regulates solid waste management, including the open burning of solid waste. Open burning is burning from which smoke is emitted directly into the air, without passing through a chimney. Under current law, DNR issues citations (similar to traffic tickets) for violations of certain laws, such as those regulating hunting, fishing, and littering. As with most environmental laws, the Department of Justice enforces the laws related to open burning by prosecuting violations in circuit court. This bill authorizes DNR and local law enforcement officials to issue citations for violations of laws or licenses regulating the open burning of solid waste.

Under the bill, there is no penalty connected with a citation for an open burning violation that is committed within a year after the bill takes effect. After that, the

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bill provides a maximum forfeiture (civil penalty) of \$500 for an open burning violation for which a citation is issued, except that the maximum forfeiture is \$5 for a first offense involving a person burning limited amounts of residential solid waste on the person's own property. In addition, the bill exempts a person who is subject to the \$5 maximum forfeiture from the crime laboratories and drug law enforcement surcharge, the environmental surcharge, the jail surcharge, the penalty surcharge, the court support services surcharge, and the justice information system surcharge.

Waste tires

Under current law, DNR issues operating licenses and approves plans of operation for facilities at which solid waste is stored, treated, or disposed of. This bill authorizes DNR to issue a citation to a person who operates a solid waste facility at which waste tires are stored, treated, or disposed of without a license or in violation of an approved plan of operation.

For further information see the *state* 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.** 23.50 (1) of the statutes is amended to read:

2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
3 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
4 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
5 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
6 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
7 administrative rules promulgated thereunder, violations specified under s. 285.86,
8 violations of ch. 951 if the animal involved is a captive wild animal, violations of rules
9 of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which
10 s. 289.97 (2) or 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted
11 by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

12 **SECTION 2.** 23.53 (1) of the statutes is amended to read:

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1 23.53 (1) The citation created under this section shall, in all actions to recover
2 forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of
3 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated
4 thereunder, and any rule of the Kickapoo reserve management board under s. 41.41
5 (7) (k) be used by any law enforcement officer with authority to enforce those laws,
6 except that the uniform traffic citation created under s. 345.11 may be used by a
7 traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law
8 enforcement agency of a municipality or county or a traffic officer employed under
9 s. 110.07 in enforcing s. 287.81 (2). In accordance with s. 345.11 (1m), the citation
10 shall not be used for violations of ch. 350 relating to highway use. The citation may
11 be used for violations of local ordinances enacted by any local authority in accordance
12 with s. 23.33 (11) (am) or 30.77. In addition, the citation may be used by a town
13 chairperson or a municipal or county law enforcement officer for violations of s.
14 287.81 (4).

15 **SECTION 3.** 29.931 (2) (a) of the statutes is amended to read:

16 29.931 (2) (a) The department and its wardens shall seize and hold, subject to
17 the order of the court for the county in which the alleged offense was committed, any
18 vehicle, boat or object declared by this chapter to be a public nuisance, or which they
19 have probable cause to believe is being used in violation of this chapter or ch. 169 or
20 s. 167.31, 287.81 (2), 940.24, 941.20, 948.60, 948.605 or 948.61, is being used in the
21 commission of a crime involving an animal normally found in the wild in violation
22 of s. 951.09, or is being used in the commission of a crime relating to a submerged
23 cultural resource in violation of s. 44.47. If it is proven that the vehicle, boat or object
24 is a public nuisance or that within 6 months previous to the seizure the vehicle, boat
25 or object was used in violation of this chapter or ch. 169 or s. 167.31, 287.81 (2),

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1 940.24, 941.20, 948.60, 948.605 or 948.61, was used in the commission of a crime
2 involving an animal normally found in the wild in violation of s. 951.09, or was used
3 in the commission of a crime relating to a submerged cultural resource in violation
4 of s. 44.47, it shall be confiscated if the court directs in its order for judgment.

5 **SECTION 4.** 60.24 (3) (vm) of the statutes is created to read:

6 60.24 (3) (vm) Enforce restrictions on open burning under s. 287.81 (4).

7 **SECTION 5.** 110.07 (1) (a) 1. and 3. of the statutes are amended to read:

8 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and
9 chs. 166, 194, 218, 341 to 349 and 351, and ss. 23.33, 125.07 (4) (b), 125.085 (3) (b),
10 167.31 (2) (b) to (d) and 287.81 (2) and ch. 350 where applicable to highways, or orders
11 or rules issued pursuant thereto.

12 3. Have authority to enter any place where vehicles subject to this chapter, ss.
13 167.31 (2) (b) to (d) and 287.81 (2) and chs. 194, 218 and 341 to 350 are stored or
14 parked at any time to examine such vehicles, or to stop such vehicles while en route
15 at any time upon the public highways to examine the same and make arrests for all
16 violations thereof.

17 **SECTION 6.** 110.07 (1) (b) of the statutes is amended to read:

18 110.07 (1) (b) All municipal judges, judges, district attorneys and law
19 enforcement officers shall assist in enforcing this chapter, ss. 167.31 (2) (b) to (d) and
20 287.81 (2) and chs. 194, 218 and 341 to 351, and orders or rules issued pursuant
21 thereto and shall report to the department the disposition of every uniform traffic
22 citation issued for cases involving those chapters.

23 **SECTION 7.** 165.755 (1) (b) of the statutes is amended to read:

24 165.755 (1) (b) A court may not impose the crime laboratories and drug law
25 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),

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1 (bm), (br), or (bv) or (5) (b), for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b)
2 3. applies, for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or
3 350.101 (1) (b), if the person who committed the violation had a blood alcohol
4 concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a
5 violation of a state law or municipal or county ordinance involving a nonmoving
6 traffic violation or a safety belt use violation under s. 347.48 (2m).

7 **SECTION 8.** 287.81 (title) of the statutes is amended to read:

8 **287.81 (title) Littering; open burning.**

9 **SECTION 9.** 287.81 (1) (as) of the statutes is created to read:

10 287.81 (1) (as) "Open burning" means burning from which the products of
11 combustion are emitted into the air without passing through a stack or chimney,
12 except that "open burning" does not include combustion occurring at a properly
13 operated air curtain destructor, as defined in s. 289.51 (1) (a).

14 **SECTION 10.** 287.81 (4) and (5) of the statutes are created to read:

15 287.81 (4) (a) No person may engage in open burning of solid waste on or along
16 any highway, on the ice of any waters of the state, or on any other public or private
17 property unless the open burning conforms with chs. 285, 289, and 291 and rules
18 promulgated and permits, licenses, and other approvals issued under those
19 chapters.

20 (b) 1. Any person who violates par. (a) before the first day of the 13th month
21 beginning after the effective date of this subdivision [revisor inserts date], is not
22 subject to a penalty under this paragraph.

23 2. Except as provided in subd. 3., any person who violates par. (a) on or after
24 the first day of the 13th month beginning after the effective date of this subdivision
25 [revisor inserts date], may be required to forfeit not more than \$500.

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1 3. For a first violation of par. (a) involving 60 or fewer gallons of residential solid
2 waste burned on the property on which it was generated, the maximum forfeiture is
3 \$5.

4 **(5)** No common law liability, and no statutory liability that is provided in a
5 statute other than this section, is affected by this section, except that if the
6 department proceeds against a person under this section, the person is not subject
7 to penalties under ch. 285, 289, or 291 for the same act or omission.

8 **SECTION 11.** 289.97 (2) of the statutes is created to read:

9 289.97 **(2)** The department may issue a citation and follow the procedures
10 under ss. 23.50 to 23.99 to collect a forfeiture from a person for operating a solid waste
11 facility at which waste tires are stored, treated, or disposed of in violation of s. 289.31
12 (1) or in violation of an approved plan of operation under s. 289.30.

13 **SECTION 12.** 299.93 (1) of the statutes is amended to read:

14 299.93 **(1)** If Except as provided in sub. (1m), if a court imposes a fine or
15 forfeiture for a violation of a provision of this chapter or chs. 280 to 285 or 289 to 295
16 or a rule or order issued under this chapter or chs. 280 to 285 or 289 to 295, the court
17 shall impose an environmental surcharge under ch. 814 equal to 10% of the amount
18 of the fine or forfeiture.

19 **SECTION 13.** 299.93 (1m) of the statutes is created to read:

20 299.93 **(1m)** Subsection (1) does not apply to a violation of s. 287.81 (4) (a) to
21 which s. 287.81 (4) (b) 3. applies.

22 **SECTION 14.** 299.95 of the statutes is amended to read:

23 **299.95 Enforcement; duty of department of justice; expenses.** The
24 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
25 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan

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1 approvals, permits, and water quality certifications of the department, except those
2 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as
3 provided in ss. 285.86, 289.97 (2), and 299.85 (7) (am). The circuit court for Dane
4 county or for any other county where a violation occurred in whole or in part has
5 jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule,
6 special order, license, plan approval, permit, or certification by injunctive and
7 other relief appropriate for enforcement. For purposes of this proceeding where chs.
8 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
9 approval, permit or certification prohibits in whole or in part any pollution, a
10 violation is considered a public nuisance. The department of natural resources may
11 enter into agreements with the department of justice to assist with the
12 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
13 to the department of justice under these agreements shall be credited to the
14 appropriation account under s. 20.455 (1) (k).

15 **SECTION 15.** 302.46 (1) (a) of the statutes is amended to read:

16 302.46 (1) (a) ~~On or after October 1, 1987, if~~ If a court imposes a fine or
17 forfeiture for a violation of state law or for a violation of a municipal or county
18 ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv)
19 or (5), ~~or for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b) 3. applies,~~ for a
20 first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b),
21 if the person who committed the violation had a blood alcohol concentration of 0.08
22 or more but less than 0.1 at the time of the violation, or for a violation of state laws
23 or municipal or county ordinances involving nonmoving traffic violations or safety
24 belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail
25 surcharge under ch. 814 in an amount of 1% of the fine or forfeiture imposed or \$10,

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1 whichever is greater. If multiple offenses are involved, the court shall determine the
2 jail surcharge on the basis of each fine or forfeiture. If a fine or forfeiture is
3 suspended in whole or in part, the court shall reduce the jail surcharge in proportion
4 to the suspension.

5 **SECTION 16.** 345.11 (1u) of the statutes is amended to read:

6 345.11 **(1u)** The uniform traffic citation may be used by an officer of a law
7 enforcement agency of a municipality or county or a traffic officer employed under
8 s. 110.07 for a violation of s. 287.81 (2).

9 **SECTION 17.** 345.20 (2) (g) of the statutes is amended to read:

10 345.20 **(2)** (g) Sections 23.50 to 23.85 apply to actions in circuit court to recover
11 forfeitures for violations of s. 287.81. No points may be assessed against the driving
12 record of a person convicted of a violation of s. 287.81 (2). The report of conviction
13 and abstract of court record copy of the citation form shall be forwarded to the
14 department.

15 **SECTION 18.** 757.05 (1) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
16 is amended to read:

17 757.05 **(1)** (a) Whenever a court imposes a fine or forfeiture for a violation of
18 state law or for a violation of a municipal or county ordinance except for a violation
19 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a violation of s. 287.81~~
20 (4) (a) to which s. 287.81 (4) (b) 3. applies, for a first violation of s. 23.33 (4c) (a) 2.,
21 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
22 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the
23 time of the violation, or for a violation of state laws or municipal or county ordinances
24 involving nonmoving traffic violations or safety belt use violations under s. 347.48
25 (2m), there shall be imposed in addition a penalty surcharge under ch. 814 in an

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1 amount of 25% of the fine or forfeiture imposed. If multiple offenses are involved,
2 the penalty surcharge shall be based upon the total fine or forfeiture for all offenses.
3 When a fine or forfeiture is suspended in whole or in part, the penalty surcharge shall
4 be reduced in proportion to the suspension.

5 **SECTION 19.** 814.85 (1) (a) of the statutes is amended to read:

6 814.85 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,
7 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
8 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the
9 time of the violation, for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b) 3.
10 applies, or for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court
11 shall charge and collect a \$68 court support services surcharge from any person,
12 including any governmental unit as defined in s. 108.02 (17), paying a fee under s.
13 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

14 **SECTION 20.** 814.86 (1) of the statutes, as affected by 2005 Wisconsin Act 25,
15 is amended to read:

16 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
17 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
18 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
19 violation, for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b) 3. applies, or for
20 a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge
21 and collect a \$12 justice information system surcharge from any person, including
22 any governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.61 (1)
23 (a), (3), or (8) (am), 814.62 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice
24 information system surcharge is in addition to the surcharge listed in sub. (1m).

25

(END)