



1999 ASSEMBLY BILL 258

March 30, 1999 - Introduced by Representatives STASKUNAS, LA FAVE, KLUSMAN and LADWIG, cosponsored by Senator DARLING. Referred to Committee on State Affairs.

1 **AN ACT to repeal** 778.25 (1) (a) 4.; **to amend** 134.66 (4) (a) 1., 134.66 (4) (a) 2.
2 (intro.), 134.66 (4) (a) 2. a., 134.66 (4) (a) 2. b., 134.66 (4) (a) 3. a., 134.66 (4) (a)
3 3. b., 134.66 (4) (a) 3. c., 778.25 (1) (a) 1., 895.035 (6), 938.17 (2) (c), 938.17 (2)
4 (d), 938.17 (2) (e), 938.344 (title), 938.344 (2r) (a), 938.344 (3), 938.45 (1r) (b) and
5 938.983 (2r) (a); and **to create** 134.66 (4) (a) 2. c., 134.66 (4) (a) 2. d., 938.344
6 (2r), 938.983 (2r), 938.983 (2t) and 938.983 (2v) of the statutes; **relating to:** the
7 dispositions that may be imposed on a person under 18 years of age who
8 possesses cigarettes or tobacco products, the sale and distribution of cigarettes
9 and tobacco products to minors and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, no person under 18 years of age may buy or attempt to buy any tobacco product, falsely represent his or her age for the purpose of receiving any tobacco product or possess any tobacco product. Currently, a person under 18 years of age who commits any of those acts may be ordered to pay a forfeiture of not more than \$50, placed in a teen court program, ordered to participate in a supervised work program or other community service work or ordered to undergo any combination of those dispositions. In addition, the parent of such a person may also be ordered to

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pay the forfeiture. This bill increases the maximum amount of a forfeiture that may be imposed on a person under 18 years of age who commits any of those acts and on the parent of such a person to \$250. The bill also permits a court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) or a municipal court to order such a person to attend a course relating to the health risks associated with the use of tobacco products.

The bill also increases the penalties for violations by retailers and others who are prohibited from selling, or distributing for free, tobacco products to minors. The increases include raising the maximum penalty amounts, changing the penalties for subsequent violations from forfeitures to fines and increasing the maximum number of days that a license or permit to sell or distribute tobacco products may be suspended.

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.** 134.66 (4) (a) 1. of the statutes is amended to read:

2 134.66 (4) (a) 1. In this paragraph, “violation” means a violation of sub. (2) (a),
3 (cm), (d) or (e) or a local ordinance which strictly conforms to sub. (2) (a), (cm), (d) or
4 (e). For purposes of determining previous violations under subs. 2. and 3., the
5 30-month periods shall be measured from the date of the violations that resulted in
6 an imposition of a forfeiture or a conviction.

7 **SECTION 2.** 134.66 (4) (a) 2. (intro.) of the statutes is amended to read:

8 134.66 (4) (a) 2. (intro.) A person who commits a violation is subject to a
9 forfeiture of:

10 **SECTION 3.** 134.66 (4) (a) 2. a. of the statutes is amended to read:

11 134.66 (4) (a) 2. a. ~~Not~~ A forfeiture of not more than \$500 if the person has not
12 committed a previous violation within ~~12~~ 30 months of the violation; ~~or~~

13 **SECTION 4.** 134.66 (4) (a) 2. b. of the statutes is amended to read:

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1 134.66 (4) (a) 2. b. ~~Not less than \$200 nor~~ A fine of not more than \$500 \$750
2 if the person has committed a previous violation within ~~12~~ 30 months of the violation;

3 **SECTION 5.** 134.66 (4) (a) 2. c. of the statutes is created to read:

4 134.66 (4) (a) 2. c. A fine of not more that \$1,000 if the person has committed
5 2 previous violations within 30 months of the violation; or

6 **SECTION 6.** 134.66 (4) (a) 2. d. of the statutes is created to read:

7 134.66 (4) (a) 2. d. A fine of not more that \$5,000 if the person has committed
8 3 or more previous violations within 30 months of the violation.

9 **SECTION 7.** 134.66 (4) (a) 3. a. of the statutes is amended to read:

10 134.66 (4) (a) 3. a. Not more than ~~3~~ 10 days, if the court finds that the person
11 committed a violation within ~~12~~ 30 months after committing one previous violation;

12 **SECTION 8.** 134.66 (4) (a) 3. b. of the statutes is amended to read:

13 134.66 (4) (a) 3. b. Not less than ~~3~~ 10 days nor more than ~~10~~ 30 days, if the court
14 finds that the person committed a violation within ~~12~~ 30 months after committing
15 2 other violations; or

16 **SECTION 9.** 134.66 (4) (a) 3. c. of the statutes is amended to read:

17 134.66 (4) (a) 3. c. Not less than ~~15~~ 10 days nor more than ~~30~~ 90 days, if the court
18 finds that the person committed the violation within ~~12~~ 30 months after committing
19 3 or more other violations.

20 **SECTION 10.** 778.25 (1) (a) 1. of the statutes is amended to read:

21 778.25 (1) (a) 1. Under s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983,
22 961.573 (2), 961.574 (2) or 961.575 (2) or under a local ordinance strictly conforming
23 to one of those statutes brought against an adult in circuit court or against a minor
24 in the court assigned to exercise jurisdiction under chs. 48 and 938.

25 **SECTION 11.** 778.25 (1) (a) 4. of the statutes is repealed.

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1 **SECTION 12.** 895.035 (6) of the statutes is amended to read:

2 895.035 **(6)** Any recovery of restitution under this section shall be reduced by
3 the amount recovered as restitution for the same act under s. 938.245, 938.32, 938.34
4 (5), 938.343 (4) or 938.45 (1r) (a). Any recovery of a forfeiture under this section shall
5 be reduced by the amount recovered as a forfeiture for the same act under s. 938.34
6 (8), 938.343 (2), 938.344 (2r) (a) or 938.45 (1r) (b). Any recovery of a surcharge under
7 this section shall be reduced by the amount recovered as a surcharge under s. 938.34
8 (8d).

9 **SECTION 13.** 938.17 (2) (c) of the statutes is amended to read:

10 938.17 **(2)** (c) The citation procedures described in ch. 800 shall govern
11 proceedings involving juveniles in municipal court, except that this chapter shall
12 govern the taking and holding of a juvenile in custody and par. (cg) shall govern the
13 issuing of a summons to the juvenile's parent, guardian or legal custodian. When a
14 juvenile is before the court assigned to exercise jurisdiction under this chapter and
15 ch. 48 upon a citation alleging the juvenile to have violated a civil law or municipal
16 ordinance, the procedures specified in s. 938.237 shall apply. If a citation is issued
17 to a juvenile, the issuing agency shall notify the juvenile's parent, guardian and legal
18 custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15
19 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983,
20 961.573 (2), 961.574 (2) or 961.575 (2) or an ordinance conforming to one of those
21 statutes shall send a copy to an intake worker under s. 938.24 for informational
22 purposes only.

23 **SECTION 14.** 938.17 (2) (d) of the statutes is amended to read:

24 938.17 **(2)** (d) If a municipal court finds that the juvenile violated a municipal
25 ordinance other than an ordinance enacted under s. 118.163 or an ordinance that

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1 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983, 961.573 (2),
2 961.574 (2) or 961.575 (2), the court shall enter any of the dispositional orders
3 permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails
4 to pay the forfeiture imposed by the municipal court, the court may not impose a jail
5 sentence but may suspend any license issued under ch. 29 for not less than 30 days
6 nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s.
7 340.01 (40), for not less than 30 days nor more than 5 years. If a court suspends a
8 license or privilege under this section, the court shall immediately take possession
9 of the applicable license and forward it to the department that issued the license,
10 together with the notice of suspension clearly stating that the suspension is for
11 failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the
12 period of suspension, the court shall immediately notify the department, which shall
13 thereupon return the license to the person.

14 **SECTION 15.** 938.17 (2) (e) of the statutes is amended to read:

15 938.17 (2) (e) If a municipal court finds that a juvenile violated a municipal
16 ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983,
17 961.573 (2), 961.574 (2) or 961.575 (2), the court shall enter a dispositional order
18 under s. 938.344 that is authorized under par. (cm).

19 **SECTION 16.** 938.344 (title) of the statutes is amended to read:

20 **938.344 (title) Disposition; certain intoxicating liquor, beer, tobacco**
21 **and drug violations.**

22 **SECTION 17.** 938.344 (2r) of the statutes is created to read:

23 938.344 (2r) If a court finds that a juvenile has committed a violation of s.
24 938.983 (2) or a local ordinance enacted under s. 938.983 (5), the court, in addition

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1 to counseling the person and his or her parent or guardian, shall order the person to
2 do any one or more of the following:

3 (a) Pay a forfeiture not to exceed \$250. Any such order shall include a finding
4 that the person alone is financially able to pay and shall allow up to 12 months for
5 the payment. If a person fails to pay the forfeiture, the court may suspend any license
6 issued under ch. 29 or suspend the person's operating privilege, as defined in s.
7 340.01 (40), for not less than 30 days nor more than 5 years. The court shall
8 immediately take possession of the suspended license and forward it to the
9 department that issued the license, together with the notice of suspension clearly
10 stating that the suspension is for failure to pay a forfeiture imposed by the court. If
11 the forfeiture is paid during the period of suspension, the court shall immediately
12 notify the department, which will thereupon return the license to the person. Any
13 recovery under this subsection shall be reduced by the amount recovered as a
14 forfeiture under s. 938.45 (1r) (b).

15 (b) Participate in a teen court program if all of the following conditions apply:

16 1. The chief judge of the judicial administrative district has approved a teen
17 court program established in the person's county of residence and the judge
18 determines that participation in the teen court program will likely benefit the person
19 and the community.

20 2. The person admits or pleads no contest in open court, with the person's
21 parent, guardian or legal custodian present, to the allegations that the person
22 violated s. 938.983 (2) or the ordinance enacted under s. 938.983 (5).

23 3. The person has not successfully completed participation in a teen court
24 program during the 2 years before the date of the alleged violation of s. 938.983 (2)
25 or the ordinance enacted under s. 938.983 (5).

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1 (c) Participate in a supervised work program or other community service work
2 under s. 938.983 (2t).

3 (d) Attend a course relating to the health risks associated with the use of
4 cigarettes or tobacco products if such a course is available within a reasonable
5 distance from the person's residence.

6 **SECTION 18.** 938.344 (2r) (a) of the statutes, as created by 1999 Wisconsin Act
7 (this act), is amended to read:

8 938.344 (2r) (a) Pay a forfeiture not to exceed \$250. Any such order shall
9 include a finding that the person alone is financially able to pay and shall allow up
10 to 12 months for the payment. If a person fails to pay the forfeiture, the court may
11 suspend any license issued under ch. 29 or suspend the person's operating privilege,
12 as defined in s. 340.01 (40), for not less than ~~30 days~~ nor more than ~~5~~ 2 years. The
13 court shall immediately take possession of the suspended license and forward it to
14 the department that issued the license, together with the notice of suspension clearly
15 stating that the suspension is for failure to pay a forfeiture imposed by the court. If
16 the forfeiture is paid during the period of suspension, the court shall immediately
17 notify the department, which will thereupon return the license to the person. Any
18 recovery under this subsection shall be reduced by the amount recovered as a
19 forfeiture under s. 938.45 (1r) (b).

20 **SECTION 19.** 938.344 (3) of the statutes is amended to read:

21 938.344 (3) If the a juvenile who is alleged to have committed the a violation
22 of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2) or 938.983, or of a local ordinance
23 that strictly conforms to one of those statutes, is within 3 months of his or her 17th
24 birthday, the court assigned to exercise jurisdiction under this chapter and ch. 48
25 may, at the request of the district attorney or on its own motion, dismiss the citation

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1 without prejudice and refer the matter to the district attorney for prosecution under
2 s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2) or 938.983 or a local ordinance that
3 strictly conforms to one of those statutes. The juvenile is entitled to a hearing only
4 on the issue of his or her age. This subsection does not apply to violations under s.
5 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to
6 one of those statutes.

7 **SECTION 20.** 938.45 (1r) (b) of the statutes is amended to read:

8 938.45 **(1r)** (b) In a proceeding in which the court has determined under s.
9 938.34 (8) ~~or~~, 938.343 (2) or 938.344 (2r) (a) that the imposition of a forfeiture would
10 be in the best interest of the juvenile and in aid of rehabilitation, the court may order
11 a parent who has custody, as defined in s. 895.035 (1), of the juvenile to pay the
12 forfeiture. The amount of any forfeiture ordered under this paragraph may not
13 exceed the amount specified in s. 799.01 (1) (d). Any order under this paragraph shall
14 include a finding that the parent who has custody of the juvenile is financially able
15 to pay the amount ordered and shall allow up to 12 months after the date of the order
16 for the payment. Any recovery under this paragraph shall be reduced by the amount
17 recovered as a forfeiture for the same act under s. 938.34 (8) ~~or~~, 938.343 (2) or 938.344
18 (2r) (a).

19 **SECTION 21.** 938.983 (2r) of the statutes is created to read:

20 938.983 **(2r)** Subject to sub. (2v), any person who violates sub. (2) is subject to
21 counseling by the court and to any one or more of the following dispositions:

22 (a) A forfeiture not to exceed \$250. Any such order shall include a finding that
23 the person alone is financially able to pay and shall allow up to 12 months for the
24 payment. If a person fails to pay the forfeiture, the court may suspend any license
25 issued under ch. 29 or suspend the person's operating privilege, as defined in s.

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1 340.01 (40), for not less than 30 days nor more than 5 years. The court shall
2 immediately take possession of the suspended license and forward it to the
3 department that issued the license, together with the notice of suspension clearly
4 stating that the suspension is for failure to pay a forfeiture imposed by the court. If
5 the forfeiture is paid during the period of suspension, the court shall immediately
6 notify the department, which will thereupon return the license to the person. Any
7 recovery under this paragraph shall be reduced by the amount recovered as a
8 forfeiture under s. 938.45 (1r) (b).

9 (b) Placement in a teen court program if all of the following conditions apply:

10 1. The chief judge of the judicial administrative district has approved a teen
11 court program established in the person's county of residence and the judge
12 determines that participation in the teen court program will likely benefit the person
13 and the community.

14 2. The person admits or pleads no contest in open court, with the person's
15 parent, guardian or legal custodian present, to the allegations that the person
16 violated sub. (2) or the ordinance enacted under sub. (5).

17 3. The person has not successfully completed participation in a teen court
18 program during the 2 years before the date of the alleged violation of sub. (2) or the
19 ordinance enacted under sub. (5).

20 (c) Participation in a supervised work program administered by the county
21 department or a community agency approved by the court or other community
22 service work administered by a public agency or nonprofit charitable organization
23 approved by the court as described in sub. (2t).

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1 (d) Attendance at a course relating to the health risks associated with the use
2 of cigarettes or tobacco products if such a course is available within a reasonable
3 distance from the person's residence.

4 **SECTION 22.** 938.983 (2r) (a) of the statutes, as created by 1999 Wisconsin Act
5 (this act), is amended to read:

6 938.983 (2r) (a) A forfeiture not to exceed \$250. Any such order shall include
7 a finding that the person alone is financially able to pay and shall allow up to 12
8 months for the payment. If a person fails to pay the forfeiture, the court may suspend
9 any license issued under ch. 29 or suspend the person's operating privilege, as
10 defined in s. 340.01 (40), for not less than 30 days nor more than 5 2 years. The court
11 shall immediately take possession of the suspended license and forward it to the
12 department that issued the license, together with the notice of suspension clearly
13 stating that the suspension is for failure to pay a forfeiture imposed by the court. If
14 the forfeiture is paid during the period of suspension, the court shall immediately
15 notify the department, which will thereupon return the license to the person. Any
16 recovery under this paragraph shall be reduced by the amount recovered as a
17 forfeiture under s. 938.45 (1r) (b).

18 **SECTION 23.** 938.983 (2t) of the statutes is created to read:

19 938.983 (2t) (a) The court shall set standards for the supervised work program
20 under sub. (2r) (c) within the budgetary limits established by the county board of
21 supervisors. The supervised work program may provide the person with reasonable
22 compensation reflecting a reasonable market value of the work performed or it may
23 consist of uncompensated community service work. The court may use any available
24 resources, including any community service work program, in ordering the person
25 to perform community service work under sub. (2r).

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1 (b) The supervised work program or other community service work shall be of
2 a constructive nature designed to promote the person's rehabilitation, shall be
3 appropriate to the person's age level and physical ability and shall be combined with
4 counseling from a member of the staff of the county department, community agency,
5 public agency or nonprofit charitable organization or other qualified person. The
6 supervised work program or other community service work may not conflict with the
7 person's regular attendance at school. The amount of work required shall be
8 reasonably related to the seriousness of the person's offense.

9 **SECTION 24.** 938.983 (2v) of the statutes is created to read:

10 938.983 (2v) A person who is under 17 years of age on the date of disposition
11 is subject to s. 938.344 unless proceedings have been instituted against the person
12 in a court of civil or criminal jurisdiction after dismissal of the citation under s.
13 938.344 (3).

14 **SECTION 25. Initial applicability.**

15 (1) The treatment of section 134.66 (4) (a) 2. (intro.), a., b., c. and d. and 3. a.,
16 b. and c. of the statutes first applies to violations committed on the effective date of
17 this subsection, but does not preclude the counting of other violations for which a
18 sentence was received before the effective date of this subsection as previous
19 violations for sentencing a person.

20 (2) (a) The treatment of sections 778.25 (1) (a) 1. and 4., 895.035 (6), 938.17 (2)
21 (c), (d) and (e), 938.344 (title) and (3), 938.45 (1r) (b) and 938.983 (2t) and (2v) of the
22 statutes and the creation of sections 938.344 (2r) and 938.983 (2r) of the statutes first
23 apply to a violation of section 938.983 (2) of the statutes occurring on the effective
24 date this paragraph.

