

1999 ASSEMBLY BILL 310

April 27, 1999 - Introduced by Representatives PETTIS, SERATTI, KREIBICH, GUNDRUM, BRANDEMUEHL, OWENS, KLUSMAN, MUSSER, KELSO, FREESE and LA FAVE, cosponsored by Senators DARLING and BRESKE. Referred to Committee on State Affairs.

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

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 pay the forfeiture. This bill increases the maximum amount of a forfeiture that may

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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 \$200.

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

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

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

6 **SECTION 2.** 778.25 (1) (a) 4. of the statutes is repealed.

7 **SECTION 3.** 895.035 (6) of the statutes is amended to read:

8 895.035 **(6)** Any recovery of restitution under this section shall be reduced by
9 the amount recovered as restitution for the same act under s. 938.245, 938.32, 938.34
10 (5), 938.343 (4) or 938.45 (1r) (a). Any recovery of a forfeiture under this section shall
11 be reduced by the amount recovered as a forfeiture for the same act under s. 938.34
12 (8), 938.343 (2), 938.344 (2r) (a) or 938.45 (1r) (b). Any recovery of a surcharge under
13 this section shall be reduced by the amount recovered as a surcharge under s. 938.34
14 (8d).

15 **SECTION 4.** 938.17 (2) (c) of the statutes is amended to read:

16 938.17 **(2)** (c) The citation procedures described in ch. 800 shall govern
17 proceedings involving juveniles in municipal court, except that this chapter shall
18 govern the taking and holding of a juvenile in custody and par. (cg) shall govern the
19 issuing of a summons to the juvenile's parent, guardian or legal custodian. When a
20 juvenile is before the court assigned to exercise jurisdiction under this chapter and
21 ch. 48 upon a citation alleging the juvenile to have violated a civil law or municipal

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1 ordinance, the procedures specified in s. 938.237 shall apply. If a citation is issued
2 to a juvenile, the issuing agency shall notify the juvenile's parent, guardian and legal
3 custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15
4 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983,
5 961.573 (2), 961.574 (2) or 961.575 (2) or an ordinance conforming to one of those
6 statutes shall send a copy to an intake worker under s. 938.24 for informational
7 purposes only.

8 **SECTION 5.** 938.17 (2) (d) of the statutes is amended to read:

9 938.17 (2) (d) If a municipal court finds that the juvenile violated a municipal
10 ordinance other than an ordinance enacted under s. 118.163 or an ordinance that
11 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983, 961.573 (2),
12 961.574 (2) or 961.575 (2), the court shall enter any of the dispositional orders
13 permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails
14 to pay the forfeiture imposed by the municipal court, the court may not impose a jail
15 sentence but may suspend any license issued under ch. 29 for not less than 30 days
16 nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s.
17 340.01 (40), for not less than 30 days nor more than 5 years. If a court suspends a
18 license or privilege under this section, the court shall immediately take possession
19 of the applicable license and forward it to the department that issued the license,
20 together with the notice of suspension clearly stating that the suspension is for
21 failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the
22 period of suspension, the court shall immediately notify the department, which shall
23 thereupon return the license to the person.

24 **SECTION 6.** 938.17 (2) (d) of the statutes, as affected by 1999 Wisconsin Act
25 (this act), is repealed and recreated to read:

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1 938.17 (2) (d) If a municipal court finds that the juvenile violated a municipal
2 ordinance other than an ordinance enacted under s. 118.163 or an ordinance that
3 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983, 961.573 (2),
4 961.574 (2) or 961.575 (2), the court shall enter any of the dispositional orders
5 permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails
6 to pay the forfeiture imposed by the municipal court, the court may not impose a jail
7 sentence but may suspend any license issued under ch. 29 for not more than 2 years,
8 or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less
9 than 30 days nor more than 5 years. If a court suspends a license or privilege under
10 this section, the court shall immediately take possession of the applicable license and
11 forward it to the department that issued the license, together with the notice of
12 suspension clearly stating that the suspension is for failure to pay a forfeiture
13 imposed by the court. If the forfeiture is paid during the period of suspension, the
14 court shall immediately notify the department, which shall thereupon return the
15 license to the person.

16 **SECTION 7.** 938.17 (2) (e) of the statutes is amended to read:

17 938.17 (2) (e) If a municipal court finds that a juvenile violated a municipal
18 ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 938.983,
19 961.573 (2), 961.574 (2) or 961.575 (2), the court shall enter a dispositional order
20 under s. 938.344 that is authorized under par. (cm).

21 **SECTION 8.** 938.344 (title) of the statutes is amended to read:

22 **938.344 (title) Disposition; certain intoxicating liquor, beer, tobacco**
23 **and drug violations.**

24 **SECTION 9.** 938.344 (2r) of the statutes is created to read:

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1 938.344 (2r) If a court finds that a juvenile has committed a violation of s.
2 938.983 (2) or a local ordinance enacted under s. 938.983 (5), the court, in addition
3 to counseling the person and his or her parent or guardian, shall order the person to
4 do any one or more of the following:

5 (a) Pay a forfeiture not to exceed \$200. Any such order shall include a finding
6 that the person alone is financially able to pay and shall allow up to 12 months for
7 the payment. If a person fails to pay the forfeiture, the court may suspend any license
8 issued under ch. 29 or suspend the person's operating privilege, as defined in s.
9 340.01 (40), for not less than 30 days nor more than 5 years. The court shall
10 immediately take possession of the suspended license and forward it to the
11 department that issued the license, together with the notice of suspension clearly
12 stating that the suspension is for failure to pay a forfeiture imposed by the court. If
13 the forfeiture is paid during the period of suspension, the court shall immediately
14 notify the department, which will thereupon return the license to the person. Any
15 recovery under this subsection shall be reduced by the amount recovered as a
16 forfeiture under s. 938.45 (1r) (b).

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

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

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

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

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

6 **SECTION 10.** 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 \$200. 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 11.** 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 12.** 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 13.** 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 \$200. 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).

24 **SECTION 14.** 938.983 (2r) (a) of the statutes, as created by 1999 Wisconsin Act
25 (this act), is amended to read:

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1 938.983 (2r) (a) A forfeiture not to exceed \$200. Any such order shall include
2 a finding that the person alone is financially able to pay and shall allow up to 12
3 months for the payment. If a person fails to pay the forfeiture, the court may suspend
4 any license issued under ch. 29 or suspend the person's operating privilege, as
5 defined in s. 340.01 (40), for not less than 30 days nor more than 5 2 years. The court
6 shall immediately take possession of the suspended license and forward it to the
7 department that issued the license, together with the notice of suspension clearly
8 stating that the suspension is for failure to pay a forfeiture imposed by the court. If
9 the forfeiture is paid during the period of suspension, the court shall immediately
10 notify the department, which will thereupon return the license to the person. Any
11 recovery under this paragraph shall be reduced by the amount recovered as a
12 forfeiture under s. 938.45 (1r) (b).

13 **SECTION 15.** 938.983 (2t) of the statutes is created to read:

14 938.983 (2t) (a) The court shall set standards for the supervised work program
15 under sub. (2r) (c) within the budgetary limits established by the county board of
16 supervisors. The supervised work program may provide the person with reasonable
17 compensation reflecting a reasonable market value of the work performed or it may
18 consist of uncompensated community service work. The court may use any available
19 resources, including any community service work program, in ordering the person
20 to perform community service work under sub. (2r).

21 (b) The supervised work program or other community service work shall be of
22 a constructive nature designed to promote the person's rehabilitation, shall be
23 appropriate to the person's age level and physical ability and shall be combined with
24 counseling from a member of the staff of the county department, community agency,
25 public agency or nonprofit charitable organization or other qualified person. The

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1 supervised work program or other community service work may not conflict with the
2 person's regular attendance at school. The amount of work required shall be
3 reasonably related to the seriousness of the person's offense.

4 **SECTION 16.** 938.983 (2v) of the statutes is created to read:

5 938.983 (2v) A person who is under 17 years of age on the date of disposition
6 is subject to s. 938.344 unless proceedings have been instituted against the person
7 in a court of civil or criminal jurisdiction after dismissal of the citation under s.
8 938.344 (3).

9 **SECTION 17. Initial applicability.**

10 (1) POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS. (a) The treatment of
11 sections 778.25 (1) (a) 1. and 4., 895.035 (6), 938.17 (2) (c) and (e), 938.344 (title) and
12 (3), 938.45 (1r) (b) and 938.983 (2t) and (2v) of the statutes, the amendment of section
13 938.17 (2) (d) of the statutes and the creation of sections 938.344 (2r) and 938.983 (2r)
14 of the statutes first apply to a violation of section 938.983 (2) of the statutes occurring
15 on the effective date this paragraph.

16 (b) The amendment of sections 938.344 (2r) (a) and 938.983 (2r) (a) of the
17 statutes and the repeal and recreation of section 938.17 (2) (d) of the statutes first
18 apply to a violation of section 938.983 (2) of the statutes occurring on the effective
19 date of this paragraph.

20 **SECTION 18. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

22 (1) POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS. The amendment of sections
23 938.344 (2r) (a) and 938.983 (2r) (a) of the statutes, the repeal and recreation of
24 section 938.17 (2) (d) of the statutes and SECTION 17 (1) (b) of this act take effect on
25 May 1, 2000, or on the date stated in the notice published by the secretary of

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1 transportation in the Wisconsin Administrative Register under section 85.515 of the
2 statutes, whichever is earlier.

3 (END)