

### 2001 DRAFTING REQUEST

#### Bill

Received: 10/30/2000

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing:

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Alt. Drafters: malaigm

Subject: Nat. Res. - boats snomos ATVs  
Children - juvenile justice

Extra Copies:

#### Pre Topic:

No specific pre topic given

#### Topic:

Personal flotation device requirements for underaged persons

#### Instructions:

Same as 1999 AB 195

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gibsom 11/02/2000 malaigm 11/07/2000	gilfokm 11/20/2000		_____			S&L
/1			jfrantze 11/21/2000	_____	lrb_docadmin 11/21/2000	lrb_docadmin 01/17/2001	

FE Sent For:

<END>

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1?	gibsom	1-11/20 King	11/21	11/21			

FE Sent For:

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D-Mate

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**1999 ASSEMBLY BILL 195**

March 12, 1999 - Introduced by Representatives SCHNEIDER, MUSSEY, ALBERS and STASKUNAS. Referred to Committee on Natural Resources.

1 ~~AN ACT to amend~~ 895.035 (6), 938.17 (2) (d), 938.343 (5m) (c) and 938.45 (1r) (b);  
2 ~~and to create~~ 30.62 (3) (c), 30.80 (5m) and 938.343 (5m) of the statutes;  
3 **relating to:** requiring underage persons to wear personal flotation devices  
4 while on certain boats and providing a penalty.

Reynolds

***Analysis by the Legislative Reference Bureau***

Under current law, each boat must have on it a personal flotation device for each person riding in the boat. Under this bill, each person under the age of 17 (underage person) must wear such a device if the underage person is in a boat that is less than 26 feet in length. The bill also establishes a procedure under which a violator may not be cited but receives a warning notice for his or her first violation. Under the bill, a parent or guardian of such an underage person is considered to have committed a violation if he or she knew that the underage person was violating the law.

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:***

5 **SECTION 1.** 30.62 (3) (c) of the statutes is created to read:

**ASSEMBLY BILL 195****SECTION 1**

1           30.62 (3) (c) 1. No person who is under the age of 17 years may ride in or on a  
2 boat that is required to carry personal flotation devices under par. (a) unless the  
3 person wears a personal flotation device that is prescribed by federal regulations  
4 during the time that the boat is being operated.

5           2. Subdivision 1. does not apply to a person under the age of 17 years who is  
6 riding in or on a boat that is 26 feet or more in length.

7           3. A violation of subd. 1. done with the knowledge of a parent or guardian shall  
8 be considered a violation committed by the parent or guardian to which s. 30.80 (5m)  
9 applies.

10           **SECTION 2.** 30.80 (5m) of the statutes is created to read:

11           30.80 (5m) (a) For a violation of s. 30.62 (3) (c) 1., if a warning notice has not  
12 been previously issued to the underage person or to the underage person's parent or  
13 legal guardian, the law enforcement officer shall issue a warning notice to the  
14 underage person or to his or her parent or legal guardian and may not issue a  
15 citation. The warning notice shall inform the recipient of the notice of the action that  
16 he or she is required to take to comply with s. 30.62 (3) (c) 1.

17           (b) If a warning notice under par. (a) has been previously issued to an underage  
18 person or to the underage person's parent or legal guardian, and the recipient of the  
19 warning notice either fails to comply with the notice or subsequently violates s. 30.62  
20 (3) (c) 1., the recipient shall forfeit not more than \$50 upon conviction.

21           (c) If a person violates s. 30.62 (3) (c) 1. and has had a previous violation of s.  
22 30.62 (3) (c) 1. to which par. (b) applied, the person shall forfeit not more than \$100  
23 upon conviction for a subsequent violation that occurs within one year of the  
24 conviction to which par. (b) applies.

**ASSEMBLY BILL 195**

1 (d) The department shall record the issuances of warning notices for purposes  
2 of this subsection.

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

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

10 **SECTION 4.** ~~938.17 (2) (d) of the statutes is amended to read.~~

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

P.W.F.

Insert  
3-25

ASSEMBLY BILL 195

SECTION 5

1 SECTION 5. 938.343 (5m) of the statutes is created to read:

2 938.343 (5m) (a) If the violation is a violation of s. 30.62 (3) (c) 1. or of an  
3 ordinance enacted in conformity with s. 30.62 (3) (c) 1. concerning the wearing of a  
4 personal flotation device and if s. 30.80 (5m) (b) or an ordinance enacted in  
5 conformity with s. 30.80 (5m) (b) applies, impose a forfeiture not to exceed \$50.

6 (b) If the violation is a violation of s. 30.62 (3) (c) 1. or of an ordinance enacted  
7 in conformity with s. 30.62 (3) (c) 1. concerning the wearing of a personal flotation  
8 device and if s. 30.80 (5m) (c) or an ordinance enacted in conformity with s. 30.80 (5m)  
9 (c) applies, impose a forfeiture not to exceed \$100.

10 (c) If a juvenile fails to pay a forfeiture imposed under par. (a) or (b), the court  
11 may suspend any license issued under ch. 29 ~~or suspend the juvenile's operating~~  
12 ~~privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than 5 years.~~

13 The court shall immediately take possession of the suspended license and forward  
14 it to the department that issued the license, together with the notice of suspension,  
15 clearly stating that the suspension is for failure to pay a forfeiture imposed by the  
16 court. If the forfeiture is paid during the period of suspension, the court shall  
17 immediately notify the department, which shall thereupon return the license to the  
18 person. ~~Any recovery under this subsection shall be reduced~~

19 ~~SECTION 6. 938.343 (5m) (c) of the statutes, as created by 1999 Wisconsin Act~~  
20 ~~... (this act), is amended to read:~~

21 ~~938.343 (5m) (c) If a juvenile fails to pay a forfeiture imposed under par. (a) or~~  
22 ~~(b), the court may suspend any license issued under ch. 29 or suspend the juvenile's~~  
23 ~~operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more~~  
24 ~~than 5 2 years. The court shall immediately take possession of the suspended license~~  
25 ~~and forward it to the department that issued the license, together with the notice of~~

(d) Any recovery under par. (a) or <sup>b</sup>(b) shall be reduced  
by the amount recovered <sup>as</sup> a forfeiture for the same act under  
s. 938.45 (1r)(b).

ASSEMBLY BILL 195

1 ~~suspension, clearly stating that the suspension is for failure to pay a forfeiture~~  
2 ~~imposed by the court. If the forfeiture is paid during the period of suspension, the~~  
3 ~~court shall immediately notify the department, which shall thereupon return the~~  
4 ~~license to the person.~~

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

6 938.45 (1r) (b) In a proceeding in which the court has determined under s.  
7 938.34 (8) or 938.343 (2) or (5m) that the imposition of a forfeiture would be in the  
8 best interest of the juvenile and in aid of rehabilitation, the court may order a parent  
9 who has custody, as defined in s. 895.035 (1), of the juvenile to pay the forfeiture. The  
10 amount of any forfeiture ordered under this paragraph may not exceed the amount  
11 specified in s. 799.01 (1) (d). Any order under this paragraph shall include a finding  
12 that the parent who has custody of the juvenile is financially able to pay the amount  
13 ordered and shall allow up to 12 months after the date of the order for the payment.  
14 Any recovery under this paragraph shall be reduced by the amount recovered as a  
15 forfeiture for the same act under s. 938.34 (8) or 938.343 (2) or (5m).

16 SECTION 8. Effective dates. This act takes effect on the first day of the 4th  
17 month beginning after publication, ~~except as follows.~~

18 ~~(1) The treatment of section 938.17 (2) (d) of the statutes and the amendment~~  
19 ~~of section 938.343 (5m) (c) of the statutes take effect on May 1, 2000, or on the date~~  
20 ~~stated in the notice published by the secretary of transportation in the Wisconsin~~  
21 ~~Administrative Register under section 85.515 of the statutes, whichever is earlier.~~

22 (END)

*D-Note*

*In addition to providing for a forfeiture for a violation of this draft and for suspension of a license issued under ch. 29 for nonpayment of ~~the~~ such a forfeiture, this draft also cleans up ss. 938.17 (2)(d) and 938.343 (c), relating to juvenile forfeitures, to make those provisions consistent with one another.*

*GMM*

*P.W.F.*



Insert 3-25 ✓

Section #. 938.17 (2) (d) of the statutes is amended to read:

2

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

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9.



Insert 3-25

Section #. 938.343 (2) of the statutes is amended to read:

for not less than 30 days nor more than 5 years

938.343 (2) ~~Impose~~ a forfeiture not to exceed the maximum forfeiture that may be imposed on an adult for committing that violation or, if the violation is only applicable to a person under 18 years of age, \$50. Any such order shall include a finding that the juvenile alone is financially able to pay and shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or, unless the forfeiture was imposed for violating an ordinance unrelated to the juvenile's operation of a motor vehicle, may suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less ~~for~~ more than 2 years. The court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which will thereupon return the license to the person. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

Except as provided in sub. (5m), impose

NOTE: 1999 Wis. Act 185 inserted the single bracketed language without showing it as underscored and deleted the double bracketed language without showing it as stricken. No change was intended. Corrective legislation is pending.

History: 1995 a. 77, 352, 448; 1997 a. 84, 183, 197, 198, 205, 248; 1999 a. 9, 32, 185.

(end of insert)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0837/1dn  
GMM:kg:jf

November 21, 2000

In addition to providing for a forfeiture for a violation of this draft and for suspension of a license issued under ch. 29 for nonpayment of such a forfeiture, this draft also cleans up ss. 938.17 (2) (d) and 938.343 (2), relating to juvenile forfeitures, to make those provisions consistent with one another.

Gordon M. Malaise  
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# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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CHIEF

LEGAL SECTION: (608) 266-3561  
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November 21, 2000

### MEMORANDUM

To: Representative Schneider

From: Mary Gibson-Glass, Senior Legislative Attorney

Re: LRB-0837 Personal flotation device requirements for underaged persons

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-3215 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.