

2001 ASSEMBLY BILL 595

October 29, 2001 – Introduced by Representatives BERCEAU, MUSSER, SINICKI, WASSERMAN and POCAN, cosponsored by Senators BURKE and RISSER. Referred to Committee on Criminal Justice.

1 **AN ACT** *to renumber and amend* 36.11 (1) (a); *to amend* 36.35 (1), 125.07 (4)
2 (a) (intro.), 125.07 (4) (b), 125.085 (3) (b) (intro.), 125.085 (3) (c) and 940.225 (5)
3 (ai); and *to create* 36.11 (1) (a) 2., 38.235, 125.07 (3) (a) 13., 125.07 (4) (f) and
4 125.085 (3) (bx) of the statutes; **relating to:** sexual assault and providing a
5 penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person is guilty of second degree sexual assault if, among other things: 1) he or she has sexual contact or sexual intercourse with an individual (victim) who is under the influence of an intoxicant; 2) as a result of the intoxicant's effects, the victim is incapable of appraising the person's conduct; and 3) the person knows of the victim's condition. In this context, current law defines "intoxicant" to exclude an alcohol beverage, unless it has been combined with a controlled substance, a controlled substance analog, or another drug. A person who commits second degree sexual assault may be fined up to \$10,000 or imprisoned for up to 30 years or both. This bill amends the definition of "intoxicant" so that it includes an alcohol beverage, without regard for whether it is combined with a controlled substance, a controlled substance analog, or another drug.

Current law also contains a number of prohibitions relating to alcohol beverages that apply to persons who are under 21 years of age (underage persons). In particular, an underage person who is not accompanied by a parent, guardian, or spouse who is 21 years of age or older may not: 1) possess or consume alcohol

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beverages; or 2) with certain exceptions, enter the premises of a licensed retail seller of alcohol beverages. In addition, an underage person may not make, alter, duplicate, carry, or use an official identification card that purports to show that the underage person has attained the legal drinking age. A person who violates one of these prohibitions is subject to a forfeiture (with the amount depending on the prohibition involved and whether the person has had any previous violations); may have his or her driver's license suspended; may be required to perform community service work; or may be subject to any combination of these penalties.

Under this bill, these prohibitions do not apply if the underage person was the victim of or a witness to a sexual assault while he or she was engaged in conduct that would otherwise be prohibited. Thus, for example, an underage person who was the victim of a sexual assault while he or she was under the influence of alcohol beverages would not be subject to the prohibition against underage consumption of alcohol beverages. In addition, under the bill, if such a person is enrolled as a student in the University of Wisconsin System or at a technical college, he or she may not be subject to academic or nonacademic discipline based on that conduct.

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

1 **SECTION 1.** 36.11 (1) (a) of the statutes is renumbered 36.11 (1) (a) 1. and
2 amended to read:

3 36.11 (1) (a) 1. The Subject to subd. 2., the board may promulgate rules under
4 ch. 227 to protect the lives, health and safety of persons on property under its
5 jurisdiction and to protect such property and to prevent obstruction of the functions
6 of the system. Any person who violates any rule promulgated under this paragraph
7 subsection may be fined not more than \$500 or imprisoned not more than 90 days or
8 both.

9 **SECTION 2.** 36.11 (1) (a) 2. of the statutes is created to read:

10 36.11 (1) (a) 2. No student may be subject to academic or nonacademic
11 discipline based on conduct described in s. 125.07 (3) (a) (intro.) or (4) (a) or (b) or
12 125.085 (3) (b) if s. 125.07 (3) (a) 13. or (4) (f) or 125.085 (3) (bx) applies.

13 **SECTION 3.** 36.35 (1) of the statutes is amended to read:

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1 36.35 (1) POWER TO SUSPEND; RULES. The board may delegate the power to
2 suspend or expel students for misconduct or other cause prescribed by the board. The
3 Subject to s. 36.11 (1) (a) 2., the board shall promulgate rules under ch. 227 governing
4 student conduct and procedures for the administration of violations.

5 **SECTION 4.** 38.235 of the statutes is created to read:

6 **38.235 Limit on disciplining students.** No student may be subject to
7 academic or nonacademic discipline based on conduct described in s. 125.07 (3) (a)
8 (intro.) or (4) (a) or (b) or 125.085 (3) (b) if s. 125.07 (3) (a) 13. or (4) (f) or 125.085 (3)
9 (bx) applies.

10 **SECTION 5.** 125.07 (3) (a) 13. of the statutes is created to read:

11 125.07 (3) (a) 13. An underage person if any of the following applies:

12 (a) The underage person has made a bona fide report to law enforcement
13 authorities that, while engaging in any conduct described under par. (a) (intro.), he
14 or she was the victim of a sexual assault under s. 940.225 or 948.02.

15 (b) While engaging in any conduct described under par. (a) (intro.), the
16 underage person witnessed a sexual assault under s. 940.225 or 948.02 that has been
17 reported to law enforcement authorities.

18 **SECTION 6.** 125.07 (4) (a) (intro.) of the statutes is amended to read:

19 125.07 (4) (a) (intro.) ~~Any~~ Subject to par. (f), any underage person who does any
20 of the following is guilty of a violation:

21 **SECTION 7.** 125.07 (4) (b) of the statutes is amended to read:

22 125.07 (4) (b) Except as provided in par. (bm) and subject to par. (f), any
23 underage person not accompanied by his or her parent, guardian or spouse who has
24 attained the legal drinking age who knowingly possesses or consumes alcohol
25 beverages is guilty of a violation.

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1 **SECTION 8.** 125.07 (4) (f) of the statutes is created to read:

2 125.07 **(4)** (f) Neither par. (a) nor par. (b) applies to an underage person if any
3 of the following applies:

4 1. The underage person has made a bona fide report to law enforcement
5 authorities that, while engaging in any conduct described under par. (a) 1. to 4. or
6 (b) or while under the influence of alcohol beverages, he or she was the victim of a
7 sexual assault under s. 940.225 or 948.02.

8 2. While engaging in any conduct described under par. (a) 1. to 4. or (b) or while
9 under the influence of alcohol beverages, the underage person witnessed a sexual
10 assault under s. 940.225 or 948.02 that has been reported to law enforcement
11 authorities.

12 **SECTION 9.** 125.085 (3) (b) (intro.) of the statutes is amended to read:

13 125.085 **(3)** (b) (intro.) Any Subject to par. (bx), any underage person who does
14 any of the following is guilty of a violation:

15 **SECTION 10.** 125.085 (3) (bx) of the statutes is created to read:

16 125.085 **(3)** (bx) Neither the prohibition in par. (a), in the case of an underage
17 person making, altering, or duplicating an official identification card for his or her
18 own use, nor par. (b) applies to an underage person if any of the following applies:

19 1. The underage person has made a bona fide report to law enforcement
20 authorities that, while engaging in any conduct described under par. (b) 1. or 4., he
21 or she was the victim of a sexual assault under s. 940.225 or 948.02.

22 2. While engaging in any conduct described under par. (b) 1. or 4., the underage
23 person witnessed a sexual assault under s. 940.225 or 948.02 that has been reported
24 to law enforcement authorities.

25 **SECTION 11.** 125.085 (3) (c) of the statutes is amended to read:

