

## 2005 DRAFTING REQUEST

### Bill

Received: **06/07/2005**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Pettis (608) 267-2365**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pettis@legis.state.wi.us**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Penalty for underage drinking violations by military personnel; creating surcharge

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### Instructions:

See Attached

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### 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>
/?				_____			S&L
/P1	agary 07/14/2005	kfollett 07/27/2005	rschluet 07/27/2005	_____	sbasford 07/27/2005		S&L
/1	agary 07/27/2005	kfollett 07/27/2005	rschluet 07/27/2005	_____	Inorthro 07/27/2005	Inorthro 07/27/2005	

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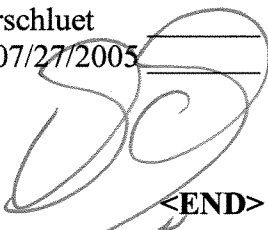
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/?							S&L
/P1	agary 07/14/2005	kfollett 07/27/2005	rschluet 07/27/2005		sbasford 07/27/2005		

FE Sent For:

1/1 k/f  
7/27

  
<END>  
7293

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This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pettis@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

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**Instructions:**

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/?	agary	1P/1G/f 7/27					S&L

FE Sent For:

<END>

(not shall be) 6/7/05

may be

Rep. Pettis

NEW BILL -

- penalty ~~\$10~~ \$5 - forfeiture
- to go to veterans trust fund

\$5 surcharge

• separate bill

• only for mil. ky person in WI  
that carry mil. ky ID F  
valid WI ID

- same ID reqs. as  
AB-141

• applies only bars

- only on-premise violations ⇒

buys: just \$5, no surcharge

• exempt all other ~~penalties~~ surcharges

may be

• also apply it to underage person  
who buys

• ~~constit~~ discussed constitutional issue: not a concern to him

Pettis

penalty bill

4/8

- Scott Stenger will call
- concerned w/ DRAM stop liability
- ~~reduce that to 19~~

~~(could impact other  
provision re  
civil liability  
for intoxicated  
endurance ?? )  
not withstanding ??~~

soon

in 7/14

p-note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: certain underage persons possessing, consuming, or being  
 2 provided alcohol beverages, creating an underage service member surcharge,  
 3 and providing a penalty.

**Analysis by the Legislative Reference Bureau**

Under current law, with certain exceptions, a person who has not reached the legal drinking age of 21 years (underage person), and who is not accompanied by his or her parent, guardian, or spouse who has reached the legal drinking age, may not knowingly possess or consume alcohol beverages and may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued. Also, no person (including a licensee or permittee) may procure for, sell, dispense, or give away alcohol beverages to an underage person who is not accompanied by his or her parent, guardian, or spouse who has reached the legal drinking age. Current law also prohibits an adult from intentionally encouraging or contributing to the illegal provision of alcohol beverages to an underage person and from knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. Current law imposes a wide variety of potential penalties for violating these various prohibitions, ranging from a forfeiture of \$100 to a fine of \$10,000 and imprisonment for not more than nine months, as well as possible driver's license suspension, alcohol beverage license suspension, required participation on a supervised work program or other community service work, or certain combinations of these penalties.

Under this bill, a person who violates any of these various prohibitions is subject to a forfeiture of \$5, and no other penalty except the surcharge described

X below, if the violation occurs on premises operated under a retail license or permit and results from the furnishing of alcohol beverages to, possession or consumption of alcohol beverages by, or presence on the premises of, a 19<sup>-year-old</sup> or 20-year-old member of the U.S. armed forces residing in this state who possesses a valid Wisconsin driver's license or identification card and a valid military identification card containing the person's photograph and date of birth (underage service member violation).

Current law imposes various surcharges against persons who violate certain laws; these surcharges must be paid in addition to any fine or forfeiture imposed and in addition to any other surcharge imposed. Under this bill, a court may not impose any of these surcharges under current law for an underage service member violation. However, the bill also creates a new underage service member surcharge, in an amount of \$5, that must be imposed on any alcohol beverage licensee or permittee or employee of such a licensee or permittee for an underage service member violation. The money collected from the underage service member surcharge is deposited in the veterans trust fund.

Under current law, a person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing, or giving away alcohol beverages to another person. However, this immunity may not apply if the person unlawfully procures alcohol beverages for or sells, dispenses, or gives away alcohol beverages to an underage person under certain circumstances. This bill provides for immunity with respect to underage service member violations.

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.** 125.035 (4) (c) of the statutes is created to read:  
 2           125.035 (4) (c) Notwithstanding par. (b), sub. (2) applies if the act of procuring  
 3 alcohol beverages for or selling, dispensing, or giving away alcohol beverages is a  
 4 violation of s. 125.07 (1) (a) for which a forfeiture is or could be imposed under s.  
 5 125.07 (1) (b) 7.

6           **SECTION 2.** 125.07 (1) (b) 7. of the statutes is created to read:  
 7           125.07 (1) (b) 7. Notwithstanding subds. 2., 3., and 5., if a violation occurs on  
 8 premises operated under a Class "B" license or permit, a "Class B" license or permit,  
 9 or a "Class C" license and results from the furnishing of alcohol beverages to, or



1 possession or consumption of alcohol beverages by, a person who is 19 or 20 years of  
2 age and a member of the U.S. armed forces, as defined in s. 40.02 (57m), residing in  
3 this state who possesses an official identification card, as defined in s. 125.085 (1),  
4 and a valid military identification card containing the person's photograph and date  
5 of birth, the person who commits the violation may be required to forfeit not more  
6 than \$5 and no license or permit may be suspended under subd. 3.

7 **SECTION 3.** 125.07 (3) (b) of the statutes is renumbered 125.07 (3) (b) 1. and  
8 amended to read:

9 **125.07 (3) (b) 1.** ~~A. Except as provided in subd. 2.,~~ a licensee or permittee who  
10 directly or indirectly permits an underage person to enter or be on a licensed  
11 premises in violation of par. (a) is subject to a forfeiture of not more than \$500.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246.

12 **SECTION 4.** 125.07 (3) (b) 2. of the statutes is created to read:

13 **125.07 (3) (b) 2.** A licensee or permittee who directly or indirectly permits a  
14 person who is 19 or 20 years of age and a member of the U.S. armed forces, as defined  
15 in s. 40.02 (57m), residing in this state who possesses an official identification card,  
16 as defined in s. 125.085 (1), and a valid military identification card containing the  
17 person's photograph and date of birth to enter or be on a licensed premises in  
18 violation of par. (a) is subject to a forfeiture of not more than \$5.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246.

19 **SECTION 5.** 125.07 (4) (cb) of the statutes is created to read:

20 **125.07 (4) (cb)** Notwithstanding pars. (bs) and (c), a person who is 19 or 20 years  
21 of age and a member of the U.S. armed forces, as defined in s. 40.02 (57m), residing  
22 in this state who possesses an official identification card, as defined in s. 125.085 (1),  
23 and a valid military identification card containing the person's photograph and date

1 of birth and who violates par. (a) 1., 2., or 3. or (b) on premises operated under a Class  
 2 "B" license or permit, a "Class B" license or permit, or a "Class C" license may be  
 3 required to forfeit not more than \$5 and is not subject to any other penalty under this  
 4 subsection.

5 SECTION 6. 125.07 (4) (cd) of the statutes is amended to read:

6 125.07 (4) (cd) For purposes of par. (bs) or, (c), or (cb), all violations arising out  
 7 of the same incident or occurrence shall be counted as a single violation.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246.

8 SECTION 7. 125.072 of the statutes is created to read:

9 125.072 Underage service member surcharge. (1) If a court imposes a  
 10 forfeiture under s. 125.07 (1) (b) 7. or (3) (b) 2. upon a licensee or permittee under this  
 11 chapter, or an employee of such a licensee or permittee, the court shall also impose  
 12 under ch. 814 an underage service member surcharge of \$5. If multiple offenses are  
 13 involved, the court shall impose an underage service member surcharge upon each  
 14 forfeiture imposed.

15 (2) (a) Except as provided in par. (b), the clerk of the circuit court shall collect  
 16 and transmit the amount of the underage service member surcharge under sub. (1)  
 17 to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall  
 18 then pay this amount to the secretary of administration as provided in s. 59.25 (3)  
 19 (f) 2.

20 (b) If a forfeiture is imposed by a municipal court, the court shall transmit the  
 21 amount of the underage service member surcharge under sub. (1) to the treasurer  
 22 of the city or village as provided in s. 66.0114 (1) (bm) and the treasurer shall then  
 23 pay this amount to the secretary of administration as provided in s. 66.0114 (1) (bm).

1 (c) The secretary of administration shall deposit all amounts received under  
2 this subsection in the veterans trust fund.

3 **SECTION 8.** 165.755 (1) (b) of the statutes is amended to read:

4 165.755 (1) (b) A court may not impose the crime laboratories and drug law  
5 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),  
6 (bm), (br), or (bv) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,  
7 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood  
8 alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,  
9 for a violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) or any local ordinance  
10 in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a forfeiture is  
11 or could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for a violation  
12 of a state law or municipal or county ordinance involving a nonmoving traffic  
13 violation or a safety belt use violation under s. 347.48 (2m).

14 History: 1997 a. 27; 1999 a. 9, 72; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327.

14 **SECTION 9.** 302.46 (1) (a) of the statutes is amended to read:

15 302.46 (1) (a) ~~On or after October 1, 1987, if~~ If a court imposes a fine or  
16 forfeiture for a violation of state law or for a violation of a municipal or county  
17 ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv)  
18 or (5), ~~or~~ for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or  
19 350.101 (1) (b), if the person who committed the violation had a blood alcohol  
20 concentration of 0.08 or more but less than 0.1 at the time of the violation, for a  
21 violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) or any local ordinance in  
22 conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a forfeiture is or  
23 could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for a violation of  
24 state laws or municipal or county ordinances involving nonmoving traffic violations

1 or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose  
 2 a jail surcharge under ch. 814 in an amount of ~~1%~~ 1 percent of the fine or forfeiture  
 3 imposed or \$10, whichever is greater. If multiple offenses are involved, the court  
 4 shall determine the jail surcharge on the basis of each fine or forfeiture. If a fine or  
 5 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge  
 6 in proportion to the suspension.

*as affected by 2005 Wisconsin Act 25,*

History: 1987 a. 27; 1989 a. 22; 1989 a. 31 s. 1670c, 1670g; Stats. 1989 s. 302.46; 1989 a. 97, 359; 1991 a. 26, 32, 130, 189; 1993 a. 313; 1995 a. 201; 1999 a. 72; 2001 a. 16; 2003 a. 30, 139, 268, 326, 327.

7

**SECTION 10.** 757.05 (1) (a) of the statutes is amended to read:

8 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of  
 9 state law or for a violation of a municipal or county ordinance except for a violation  
 10 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or~~ for a first violation of s.  
 11 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who  
 12 committed the violation had a blood alcohol concentration of 0.08 or more but less  
 13 than 0.1 at the time of the violation, for a violation of s. 125.07 (1) (a), (3) (a), or (4)  
 14 (a) 1., 2., 3. or (b) or any local ordinance in conformity with s. 125.07 (1) (a), (3) (a),  
 15 or (4) (a) 1., 2., 3. or (b) if a forfeiture is or could be imposed under s. 125.07 (1) (b)  
 16 7., (3) (b) 2., or (4) (cb), or for a violation of state laws or municipal or county  
 17 ordinances involving nonmoving traffic violations or safety belt use violations under  
 18 s. 347.48 (2m), there shall be imposed in addition a penalty surcharge under ch. 814  
 19 in an amount of ~~24%~~ <sup>25%</sup> ~~24~~ <sup>5</sup> percent of the fine or forfeiture imposed. If multiple offenses  
 20 are involved, the penalty surcharge shall be based upon the total fine or forfeiture  
 21 for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty  
 22 surcharge shall be reduced in proportion to the suspension.

23

History: 1999 a. 9 ss. 2292m, 2298, 3050m to 3050o; 1999 a. 72 s. 6; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327.

**SECTION 11.** 814.63 (1) (c) of the statutes is amended to read:

1           814.63 (1) (c) This subsection does not apply to an action for a violation of s.  
2           101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), for a first violation of s. 23.33  
3           (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who  
4           committed the violation had a blood alcohol concentration of 0.08 or more but less  
5           than 0.1 at the time of the violation, for a violation of s. 125.07 (1) (a), (3) (a), or (4)  
6           (a) 1., 2., 3. or (b) or any local ordinance in conformity with s. 125.07 (1) (a), (3) (a),  
7           or (4) (a) 1., 2., 3. or (b) if a forfeiture is or could be imposed under s. 125.07 (1) (b)  
8           7., (3) (b) 2., or (4) (cb), or for a violation of a safety belt use violation under s. 347.48  
9           (2m).

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130; 1993 a. 16, 167, 313; 1995 a. 27, 227, 349; 1997 a. 27, 248; 1999 a. 9, 72; 2001 a. 16; 2003 a. 30, 33, 139, 268, 327.

10           **SECTION 12.** 814.63 (2) of the statutes is amended to read:

11           814.63 (2) Upon the disposition of a forfeiture action in circuit court for  
12           violation of a county, town, city, village, town sanitary district or public inland lake  
13           protection and rehabilitation district ordinance, except for an action for a first  
14           violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the  
15           person who committed the violation had a blood alcohol concentration of 0.08 or more  
16           but less than 0.1 at the time of the violation, for a violation of any local ordinance in  
17           conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a forfeiture is or  
18           could be imposed in conformity with s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for a  
19           safety belt use violation under s. 347.48 (2m), the county, town, city, village, town  
20           sanitary district or public inland lake protection and rehabilitation district shall pay  
21           a nonrefundable fee of \$5 to the clerk of circuit court.

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130; 1993 a. 16, 167, 313; 1995 a. 27, 227, 349; 1997 a. 27, 248; 1999 a. 9, 72; 2001 a. 16; 2003 a. 30, 33, 139, 268, 327.

22           **SECTION 13.** 814.65 (1) of the statutes is amended to read:

1           814.65 (1) COURT COSTS. In a municipal court action, except for an action for  
 2 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)  
 3 (b), if the person who committed the violation had a blood alcohol concentration of  
 4 0.08 or more but less than 0.1 at the time of the violation, for a violation of any local  
 5 ordinance in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a  
 6 forfeiture is or could be imposed in conformity with s. 125.07 (1) (b) 7., (3) (b) 2., or  
 7 (4) (cb), or for a violation of an ordinance in conformity with s. 347.48 (2m), the  
 8 municipal judge shall collect a fee of not less than \$15 nor more than \$23 on each  
 9 separate matter, whether it is on default of appearance, a plea of guilty or no contest,  
 10 on issuance of a warrant or summons, or the action is tried as a contested matter.  
 11 Of each fee received by the judge under this subsection, the municipal treasurer shall  
 12 pay monthly \$5 to the secretary of administration for deposit in the general fund and  
 13 shall retain the balance for the use of the municipality.

History: 1981 c. 317; 1983 a. 107; 1987 a. 181, 389, 399, 403; 1989 a. 22; 1991 a. 26; 1997 a. 27; 2003 a. 30, 33, 320.

14           **SECTION 14.** 814.75 (23m) of the statutes is created to read:

15           814.75 (23m) The underage service member surcharge under s. 125.072.

16           **SECTION 15.** 814.78 (13) of the statutes is created to read:

17           814.78 (13) The underage service member surcharge under s. 125.072.

18           **SECTION 16.** 814.80 (12) of the statutes is created to read:

19           814.80 (12) The underage service member surcharge under s. 125.072.

20           **SECTION 17.** 814.81 (10) of the statutes is created to read:

21           814.81 (10) The underage service member surcharge under s. 125.072.

22           **SECTION 18.** 814.85 (1) (a) of the statutes is amended to read:

23           814.85 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,  
 24 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the

1 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the  
 2 time of the violation, for a violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b)  
 3 or any local ordinance in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3.  
 4 or (b) if a forfeiture is or could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4)  
 5 (cb), or for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court  
 6 shall charge and collect a \$68 court support services surcharge from any person,  
 7 including any governmental unit as defined in s. 108.02 (17), paying a fee under s.  
 8 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

*as affected by 2005 Wisconsin Act 25,*

History: 1993 a. 16; 1995 a. 27, 201, 417; 2001 a. 109; 2003 a. 30, 33; 2003 a. 139 ss. 197 to 200; Stats. 2003 s. 814.85; 2003 a. 326 ss. 123 to 125.

**SECTION 19.** 814.86 (1) of the statutes is amended to read:

10 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681  
 11 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation  
 12 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the  
 13 violation, for a violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) or any local  
 14 ordinance in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a  
 15 forfeiture is or could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for  
 16 a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge  
 17 and collect a \$<sup>912</sup> justice information system surcharge from any person, including any  
 18 governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a),  
 19 (3), or (8) (am), 814.62 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information  
 20 system surcharge is in addition to the surcharge listed in sub. (1m).

History: 1987 a. 27; 1989 a. 22; 1991 a. 26, 39; 1993 a. 16; 1995 a. 27, 201; 1997 a. 27; 1999 a. 9; 2003 a. 30, 33; 2003 a. 139 s. 201; Stats. 2003 s. 814.86; 2003 a. 326.

**SECTION 20. Initial applicability.**

22 (1) This act first applies to violations committed on the effective date of this  
 23 subsection.

**SECTION 21. Effective date.**





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

LRB-3166/P1dn

ARG: *gjf*

*Date*

ATTN: Representative Pettis

As discussed, the attached draft may raise constitutional concerns in imposing different penalties on different groups of people for the same legal violation. While no protected class would be involved, there still may be Equal Protection Clause issues arising from the draft. While I cannot predict whether a constitutional challenge would be made or the outcome of such a challenge if made, it is at least possible that the provisions of the bill might be challenged in court.

As discussed, the attached bill seems to comply with the national minimum drinking age law, 23 USC 158 (a). However, you may wish to seek a second opinion from the NHTSA or DOT on this important issue.

Because of the surcharge created in the attached draft, some time for implementation will be needed. Accordingly, I have included a delayed effective date of approximately three months, although I am not sure if this provides sufficient time.

Please let me know if you would like any changes made to the attached bill. If the attached draft meets with your approval, I can redraft it as an introducible "1" bill.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

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

LRB-3166/P1dn  
ARG:kjf:rs

July 27, 2005

ATTN: Representative Pettis

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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

~~1208/71~~

7/27

file from Rep. Pettis

- redraft ~~3166~~ 3166 as a / 1





State of Wisconsin  
2005 - 2006 LEGISLATURE

50m

LRB-3166/P1

ARG:kjf:16

in 7/27

RTR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

No changes

Regen

1 AN ACT *to renumber and amend* 125.07 (3) (b); *to amend* 125.07 (4) (cd),  
2 165.755 (1) (b), 302.46 (1) (a), 757.05 (1) (a), 814.63 (1) (c), 814.63 (2), 814.65 (1),  
3 814.85 (1) (a) and 814.86 (1); and *to create* 125.035 (4) (c), 125.07 (1) (b) 7.,  
4 125.07 (3) (b) 2., 125.07 (4) (cb), 125.072, 814.75 (23m), 814.78 (13), 814.80 (12)  
5 and 814.81 (10) of the statutes; **relating to:** certain underage persons  
6 possessing, consuming, or being provided alcohol beverages, creating an  
7 underage service member surcharge, and providing a penalty.

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

Under current law, with certain exceptions, a person who has not reached the legal drinking age of 21 years (underage person), and who is not accompanied by his or her parent, guardian, or spouse who has reached the legal drinking age, may not knowingly possess or consume alcohol beverages and may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued. Also, no person (including a licensee or permittee) may procure for, sell, dispense, or give away alcohol beverages to an underage person who is not accompanied by his or her parent, guardian, or spouse who has reached the legal drinking age. Current law also prohibits an adult from intentionally encouraging or contributing to the illegal provision of alcohol beverages to an underage person and from knowingly permitting or failing to take action to prevent the illegal

consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. Current law imposes a wide variety of potential penalties for violating these various prohibitions, ranging from a forfeiture of \$100 to a fine of \$10,000 and imprisonment for not more than nine months, as well as possible driver's license suspension, alcohol beverage license suspension, required participation on a supervised work program or other community service work, or certain combinations of these penalties.

Under this bill, a person who violates any of these various prohibitions is subject to a forfeiture of \$5, and no other penalty except the surcharge described below, if the violation occurs on premises operated under a retail license or permit and results from the furnishing of alcohol beverages to, possession or consumption of alcohol beverages by, or presence on the premises of, a 19-year-old or 20-year-old member of the U.S. armed forces residing in this state who possesses a valid Wisconsin driver's license or identification card and a valid military identification card containing the person's photograph and date of birth (underage service member violation).

Current law imposes various surcharges against persons who violate certain laws; these surcharges must be paid in addition to any fine or forfeiture imposed and in addition to any other surcharge imposed. Under this bill, a court may not impose any of these surcharges under current law for an underage service member violation. However, the bill also creates a new underage service member surcharge, in an amount of \$5, that must be imposed on any alcohol beverage licensee or permittee or employee of such a licensee or permittee for an underage service member violation. The money collected from the underage service member surcharge is deposited in the veterans trust fund.

Under current law, a person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing, or giving away alcohol beverages to another person. However, this immunity may not apply if the person unlawfully procures alcohol beverages for or sells, dispenses, or gives away alcohol beverages to an underage person under certain circumstances. This bill provides for immunity with respect to underage service member violations.

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.** 125.035 (4) (c) of the statutes is created to read:  
2           125.035 (4) (c) Notwithstanding par. (b), sub. (2) applies if the act of procuring  
3 alcohol beverages for or selling, dispensing, or giving away alcohol beverages is a

1 violation of s. 125.07 (1) (a) for which a forfeiture is or could be imposed under s.  
2 125.07 (1) (b) 7.

3 **SECTION 2.** 125.07 (1) (b) 7. of the statutes is created to read:

4 125.07 (1) (b) 7. Notwithstanding subds. 2., 3., and 5., if a violation occurs on  
5 premises operated under a Class “B” license or permit, a “Class B” license or permit,  
6 or a “Class C” license and results from the furnishing of alcohol beverages to, or  
7 possession or consumption of alcohol beverages by, a person who is 19 or 20 years of  
8 age and a member of the U.S. armed forces, as defined in s. 40.02 (57m), residing in  
9 this state who possesses an official identification card, as defined in s. 125.085 (1),  
10 and a valid military identification card containing the person’s photograph and date  
11 of birth, the person who commits the violation may be required to forfeit not more  
12 than \$5 and no license or permit may be suspended under subd. 3.

13 **SECTION 3.** 125.07 (3) (b) of the statutes is renumbered 125.07 (3) (b) 1. and  
14 amended to read:

15 125.07 (3) (b) 1. ~~A~~ Except as provided in subd. 2., a licensee or permittee who  
16 directly or indirectly permits an underage person to enter or be on a licensed  
17 premises in violation of par. (a) is subject to a forfeiture of not more than \$500.

18 **SECTION 4.** 125.07 (3) (b) 2. of the statutes is created to read:

19 125.07 (3) (b) 2. A licensee or permittee who directly or indirectly permits a  
20 person who is 19 or 20 years of age and a member of the U.S. armed forces, as defined  
21 in s. 40.02 (57m), residing in this state who possesses an official identification card,  
22 as defined in s. 125.085 (1), and a valid military identification card containing the  
23 person’s photograph and date of birth to enter or be on a licensed premises in  
24 violation of par. (a) is subject to a forfeiture of not more than \$5.

25 **SECTION 5.** 125.07 (4) (cb) of the statutes is created to read:

1           125.07 (4) (cb) Notwithstanding pars. (bs) and (c), a person who is 19 or 20 years  
2 of age and a member of the U.S. armed forces, as defined in s. 40.02 (57m), residing  
3 in this state who possesses an official identification card, as defined in s. 125.085 (1),  
4 and a valid military identification card containing the person's photograph and date  
5 of birth and who violates par. (a) 1., 2., or 3. or (b) on premises operated under a Class  
6 "B" license or permit, a "Class B" license or permit, or a "Class C" license may be  
7 required to forfeit not more than \$5 and is not subject to any other penalty under this  
8 subsection.

9           **SECTION 6.** 125.07 (4) (cd) of the statutes is amended to read:

10           125.07 (4) (cd) For purposes of par. (bs) ~~or~~, (c), or (cb), all violations arising out  
11 of the same incident or occurrence shall be counted as a single violation.

12           **SECTION 7.** 125.072 of the statutes is created to read:

13           **125.072 Underage service member surcharge.** (1) If a court imposes a  
14 forfeiture under s. 125.07 (1) (b) 7. or (3) (b) 2. upon a licensee or permittee under this  
15 chapter, or an employee of such a licensee or permittee, the court shall also impose  
16 under ch. 814 an underage service member surcharge of \$5. If multiple offenses are  
17 involved, the court shall impose an underage service member surcharge upon each  
18 forfeiture imposed.

19           (2) (a) Except as provided in par. (b), the clerk of the circuit court shall collect  
20 and transmit the amount of the underage service member surcharge under sub. (1)  
21 to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall  
22 then pay this amount to the secretary of administration as provided in s. 59.25 (3)  
23 (f) 2.

24           (b) If a forfeiture is imposed by a municipal court, the court shall transmit the  
25 amount of the underage service member surcharge under sub. (1) to the treasurer

1 of the city or village as provided in s. 66.0114 (1) (bm) and the treasurer shall then  
2 pay this amount to the secretary of administration as provided in s. 66.0114 (1) (bm).

3 (c) The secretary of administration shall deposit all amounts received under  
4 this subsection in the veterans trust fund.

5 **SECTION 8.** 165.755 (1) (b) of the statutes is amended to read:

6 165.755 (1) (b) A court may not impose the crime laboratories and drug law  
7 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),  
8 (bm), (br), or (bv) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,  
9 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood  
10 alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,  
11 for a violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) or any local ordinance  
12 in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a forfeiture is  
13 or could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for a violation  
14 of a state law or municipal or county ordinance involving a nonmoving traffic  
15 violation or a safety belt use violation under s. 347.48 (2m).

16 **SECTION 9.** 302.46 (1) (a) of the statutes is amended to read:

17 302.46 (1) (a) ~~On or after October 1, 1987, if~~ If a court imposes a fine or  
18 forfeiture for a violation of state law or for a violation of a municipal or county  
19 ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv)  
20 or (5), ~~or~~ for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or  
21 350.101 (1) (b), if the person who committed the violation had a blood alcohol  
22 concentration of 0.08 or more but less than 0.1 at the time of the violation, for a  
23 violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) or any local ordinance in  
24 conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a forfeiture is or  
25 could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for a violation of



1 state laws or municipal or county ordinances involving nonmoving traffic violations  
2 or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose  
3 a jail surcharge under ch. 814 in an amount of ~~1%~~ 1 percent of the fine or forfeiture  
4 imposed or \$10, whichever is greater. If multiple offenses are involved, the court  
5 shall determine the jail surcharge on the basis of each fine or forfeiture. If a fine or  
6 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge  
7 in proportion to the suspension.

8 **SECTION 10.** 757.05 (1) (a) of the statutes, as affected by 2005 Wisconsin Act 25,  
9 is amended to read:

10 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of  
11 state law or for a violation of a municipal or county ordinance except for a violation  
12 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or~~ for a first violation of s.  
13 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who  
14 committed the violation had a blood alcohol concentration of 0.08 or more but less  
15 than 0.1 at the time of the violation, for a violation of s. 125.07 (1) (a), (3) (a), or (4)  
16 (a) 1., 2., 3. or (b) or any local ordinance in conformity with s. 125.07 (1) (a), (3) (a),  
17 or (4) (a) 1., 2., 3. or (b) if a forfeiture is or could be imposed under s. 125.07 (1) (b)  
18 7., (3) (b) 2., or (4) (cb), or for a violation of state laws or municipal or county  
19 ordinances involving nonmoving traffic violations or safety belt use violations under  
20 s. 347.48 (2m), there shall be imposed in addition a penalty surcharge under ch. 814  
21 in an amount of ~~25%~~ 25 percent of the fine or forfeiture imposed. If multiple offenses  
22 are involved, the penalty surcharge shall be based upon the total fine or forfeiture  
23 for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty  
24 surcharge shall be reduced in proportion to the suspension.

25 **SECTION 11.** 814.63 (1) (c) of the statutes is amended to read:

1           814.63 (1) (c) This subsection does not apply to an action for a violation of s.  
2           101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), for a first violation of s. 23.33  
3           (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who  
4           committed the violation had a blood alcohol concentration of 0.08 or more but less  
5           than 0.1 at the time of the violation, for a violation of s. 125.07 (1) (a), (3) (a), or (4)  
6           (a) 1., 2., 3. or (b) or any local ordinance in conformity with s. 125.07 (1) (a), (3) (a),  
7           or (4) (a) 1., 2., 3. or (b) if a forfeiture is or could be imposed under s. 125.07 (1) (b)  
8           7., (3) (b) 2., or (4) (cb), or for a violation of a safety belt use violation under s. 347.48  
9           (2m).

10           **SECTION 12.** 814.63 (2) of the statutes is amended to read:

11           814.63 (2) Upon the disposition of a forfeiture action in circuit court for  
12           violation of a county, town, city, village, town sanitary district or public inland lake  
13           protection and rehabilitation district ordinance, except for an action for a first  
14           violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the  
15           person who committed the violation had a blood alcohol concentration of 0.08 or more  
16           but less than 0.1 at the time of the violation, for a violation of any local ordinance in  
17           conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a forfeiture is or  
18           could be imposed in conformity with s. 125.07 (1) (b) 7., (3) (b) 2., or (4) (cb), or for a  
19           safety belt use violation under s. 347.48 (2m), the county, town, city, village, town  
20           sanitary district or public inland lake protection and rehabilitation district shall pay  
21           a nonrefundable fee of \$5 to the clerk of circuit court.

22           **SECTION 13.** 814.65 (1) of the statutes is amended to read:

23           814.65 (1) COURT COSTS. In a municipal court action, except for an action for  
24           a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)  
25           (b), if the person who committed the violation had a blood alcohol concentration of

1 0.08 or more but less than 0.1 at the time of the violation, for a violation of any local  
2 ordinance in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b) if a  
3 forfeiture is or could be imposed in conformity with s. 125.07 (1) (b) 7., (3) (b) 2., or  
4 (4) (cb), or for a violation of an ordinance in conformity with s. 347.48 (2m), the  
5 municipal judge shall collect a fee of not less than \$15 nor more than \$23 on each  
6 separate matter, whether it is on default of appearance, a plea of guilty or no contest,  
7 on issuance of a warrant or summons, or the action is tried as a contested matter.  
8 Of each fee received by the judge under this subsection, the municipal treasurer shall  
9 pay monthly \$5 to the secretary of administration for deposit in the general fund and  
10 shall retain the balance for the use of the municipality.

11 **SECTION 14.** 814.75 (23m) of the statutes is created to read:

12 814.75 (23m) The underage service member surcharge under s. 125.072.

13 **SECTION 15.** 814.78 (13) of the statutes is created to read:

14 814.78 (13) The underage service member surcharge under s. 125.072.

15 **SECTION 16.** 814.80 (12) of the statutes is created to read:

16 814.80 (12) The underage service member surcharge under s. 125.072.

17 **SECTION 17.** 814.81 (10) of the statutes is created to read:

18 814.81 (10) The underage service member surcharge under s. 125.072.

19 **SECTION 18.** 814.85 (1) (a) of the statutes is amended to read:

20 814.85 (1) (a) Except for an action 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, for a violation of s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3. or (b)  
24 or any local ordinance in conformity with s. 125.07 (1) (a), (3) (a), or (4) (a) 1., 2., 3.  
25 or (b) if a forfeiture is or could be imposed under s. 125.07 (1) (b) 7., (3) (b) 2., or (4)



**Northrop, Lori**

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**From:** Pettis, Mark  
**Sent:** Wednesday, July 27, 2005 3:34 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-3166/1 Topic: Penalty for underage drinking violations by military personnel; creating surcharge

It has been requested by <Pettis, Mark> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-3166/1 Topic: Penalty for underage drinking violations by military personnel; creating surcharge