

2009 ASSEMBLY BILL 114

March 4, 2009 – Introduced by Representatives MOLEPSKE JR., BLACK, KERKMAN, BENEDICT, TOWNSEND, A. OTT and CLARK, cosponsored by Senators LASSA, TAYLOR and LEHMAN. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 23.50 (1), 23.53 (1), 110.07 (1) (a) 1. and 3., 110.07 (1) (b),
2 165.755 (1) (b), 287.81 (title), 299.95, 302.46 (1) (a), 345.11 (1u), 345.20 (2) (g),
3 757.05 (1) (a), 814.85 (1) (a) and 814.86 (1); **to repeal and recreate** 23.50 (1);
4 and **to create** 60.24 (3) (vm), 287.81 (1) (as), 287.81 (4) and (5) and 289.97 (2)
5 of the statutes; **relating to:** open burning of solid waste, illegal storage or
6 disposal of waste tires, and providing a penalty.

Analysis by the Legislative Reference Bureau

Open burning

Under current law, the Department of Natural Resources (DNR) regulates solid waste management, including the open burning of solid waste. Open burning is burning from which smoke is emitted directly into the air, without passing through a chimney. Under current law, DNR issues citations (similar to traffic tickets) for violations of certain laws, such as those regulating hunting, fishing, and littering. As with most environmental laws, the Department of Justice enforces the laws related to open burning by prosecuting violations in circuit court. This bill authorizes DNR and local law enforcement officials to issue citations for violations of laws or licenses regulating the open burning of solid waste.

Under the bill, there is no penalty connected with a citation for an open burning violation that is committed within a year after the bill takes effect. After that, the

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bill provides a maximum forfeiture (civil penalty) of \$500 for an open burning violation for which a citation is issued, except that the maximum forfeiture is \$5 for a first offense involving a person burning limited amounts of residential solid waste on the person's own property. In addition, the bill exempts a person who is subject to the \$5 maximum forfeiture from the crime laboratories and drug law enforcement surcharge, the the jail surcharge, the penalty surcharge, the court support services surcharge, and the justice information system surcharge.

Waste tires

Under current law, DNR issues operating licenses and approves plans of operation for facilities at which solid waste is stored, treated, or disposed of. This bill authorizes DNR to issue a citation to a person who operates a solid waste facility at which waste tires are stored, treated, or disposed of without a license or in violation of an approved plan of operation.

For further information see the **state** 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.** 23.50 (1) of the statutes is amended to read:

2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
3 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
4 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
5 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
6 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
7 administrative rules promulgated thereunder, violations specified under s. 280.98
8 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
9 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
10 violations to which s. 289.97 (2) or 299.85 (7) (a) 2. or 4. applies, or violations of local
11 ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or
12 30.77.

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1 **SECTION 2.** 23.50 (1) of the statutes, as affected by 2005 Wisconsin Act 360 and
2 2007 Wisconsin Act ... (this act), is repealed and recreated to read:

3 **23.50 (1)** The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
4 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
5 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
6 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
7 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
8 administrative rules promulgated thereunder, violations specified under s. 280.98
9 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
10 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
11 violations to which s. 289.97 (2) or 299.85 (7) (a) 2. or 4. applies, or violations of local
12 ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or
13 30.77.

14 **SECTION 3.** 23.53 (1) of the statutes is amended to read:

15 **23.53 (1)** The citation created under this section shall, in all actions to recover
16 forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of
17 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated
18 thereunder, and any rule of the Kickapoo reserve management board under s. 41.41
19 (7) (k) be used by any law enforcement officer with authority to enforce those laws,
20 except that the uniform traffic citation created under s. 345.11 may be used by a
21 traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law
22 enforcement agency of a municipality or county or a traffic officer employed under
23 s. 110.07 in enforcing s. 287.81 (2). In accordance with s. 345.11 (1m), the citation
24 shall not be used for violations of ch. 350 relating to highway use. The citation may
25 be used for violations of local ordinances enacted by any local authority in accordance

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1 with s. 23.33 (11) (am) or 30.77. In addition, the citation may be used by a town
2 chairperson or a municipal or county law enforcement officer for violations of s.
3 287.81 (4).

4 **SECTION 4.** 60.24 (3) (vm) of the statutes is created to read:

5 60.24 (3) (vm) Enforce restrictions on open burning under s. 287.81 (4).

6 **SECTION 5.** 110.07 (1) (a) 1. and 3. of the statutes are amended to read:

7 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and
8 chs. 166, 194, 218, 341 to 349 and 351, and ss. 23.33, 125.07 (4) (b), 125.085 (3) (b),
9 167.31 (2) (b) to (d) and 287.81 (2) and ch. 350 where applicable to highways, or orders
10 or rules issued pursuant thereto.

11 3. Have authority to enter any place where vehicles subject to this chapter, ss.
12 167.31 (2) (b) to (d) and 287.81 (2) and chs. 194, 218 and 341 to 350 are stored or
13 parked at any time to examine such vehicles, or to stop such vehicles while en route
14 at any time upon the public highways to examine the same and make arrests for all
15 violations thereof.

16 **SECTION 6.** 110.07 (1) (b) of the statutes is amended to read:

17 110.07 (1) (b) All municipal judges, judges, district attorneys and law
18 enforcement officers shall assist in enforcing this chapter, ss. 167.31 (2) (b) to (d) and
19 287.81 (2) and chs. 194, 218 and 341 to 351, and orders or rules issued pursuant
20 thereto and shall report to the department the disposition of every uniform traffic
21 citation issued for cases involving those chapters.

22 **SECTION 7.** 165.755 (1) (b) of the statutes is amended to read:

23 165.755 (1) (b) A court may not impose the crime laboratories and drug law
24 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),
25 (bm), (br), or (bv) or (5) (b), for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b)

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1 3. applies, for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or
2 350.101 (1) (b), if the person who committed the violation had a blood alcohol
3 concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a
4 violation of a state law or municipal or county ordinance involving a nonmoving
5 traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use violation
6 under s. 347.48 (2m).

7 **SECTION 8.** 287.81 (title) of the statutes is amended to read:

8 **287.81** (title) **Littering; open burning.**

9 **SECTION 9.** 287.81 (1) (as) of the statutes is created to read:

10 287.81 **(1)** (as) “Open burning” means burning from which the products of
11 combustion are emitted into the air without passing through a stack or chimney,
12 except that “open burning” does not include combustion occurring at a properly
13 operated air curtain destructor, as defined in s. 289.51 (1) (a).

14 **SECTION 10.** 287.81 (4) and (5) of the statutes are created to read:

15 287.81 **(4)** (a) No person may engage in open burning of solid waste on or along
16 any highway, on the ice of any waters of the state, or on any other public or private
17 property unless the open burning conforms with chs. 285, 289, and 291 and rules
18 promulgated and permits, licenses, and other approvals issued under those
19 chapters.

20 (b) 1. Any person who violates par. (a) before the first day of the 13th month
21 beginning after the effective date of this subdivision [LRB inserts date], is not
22 subject to a penalty under this paragraph.

23 2. Except as provided in subd. 3., any person who violates par. (a) on or after
24 the first day of the 13th month beginning after the effective date of this subdivision
25 [LRB inserts date], may be required to forfeit not more than \$500.

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1 3. For a first violation of par. (a) involving 60 or fewer gallons of residential solid
2 waste burned on the property on which it was generated, the maximum forfeiture is
3 \$5.

4 **(5)** No common law liability, and no statutory liability that is provided in a
5 statute other than this section, is affected by this section, except that if the
6 department proceeds against a person under this section, the person is not subject
7 to penalties under ch. 285, 289, or 291 for the same act or omission.

8 **SECTION 11.** 289.97 (2) of the statutes is created to read:

9 289.97 **(2)** The department may issue a citation and follow the procedures
10 under ss. 23.50 to 23.99 to collect a forfeiture from a person for operating a solid waste
11 facility at which waste tires are stored, treated, or disposed of in violation of s. 289.31
12 (1) or in violation of an approved plan of operation under s. 289.30.

13 **SECTION 12.** 299.95 of the statutes is amended to read:

14 **299.95 Enforcement; duty of department of justice; expenses.** The
15 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
16 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
17 permits, and water quality certifications of the department, except those
18 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
19 in ss. 285.86, 289.97 (2), and 299.85 (7) (am). The circuit court for Dane county or
20 for any other county where a violation occurred in whole or in part has jurisdiction
21 to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
22 license, plan approval, permit, or certification by injunctive and other relief
23 appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285
24 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit
25 or certification prohibits in whole or in part any pollution, a violation is considered

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1 a public nuisance. The department of natural resources may enter into agreements
2 with the department of justice to assist with the administration of chs. 281 to 285 and
3 289 to 295 and this chapter. Any funds paid to the department of justice under these
4 agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

5 **SECTION 13.** 302.46 (1) (a) of the statutes is amended to read:

6 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
7 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
8 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or~~ for a violation of s. 287.81 (4) (a) to
9 which s. 287.81 (4) (b) 3. applies, for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)
10 (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had
11 a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
12 violation, or for a violation of state laws or municipal or county ordinances involving
13 nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety belt use
14 violations under s. 347.48 (2m), the court, in addition, shall impose a jail surcharge
15 under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed or \$10,
16 whichever is greater. If multiple offenses are involved, the court shall determine the
17 jail surcharge on the basis of each fine or forfeiture. If a fine or forfeiture is
18 suspended in whole or in part, the court shall reduce the jail surcharge in proportion
19 to the suspension.

20 **SECTION 14.** 345.11 (1u) of the statutes is amended to read:

21 345.11 (1u) The uniform traffic citation may be used by an officer of a law
22 enforcement agency of a municipality or county or a traffic officer employed under
23 s. 110.07 for a violation of s. 287.81 (2).

24 **SECTION 15.** 345.20 (2) (g) of the statutes is amended to read:

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1 345.20 (2) (g) Sections 23.50 to 23.85 apply to actions in circuit court to recover
2 forfeitures for violations of s. 287.81. No points may be assessed against the driving
3 record of a person convicted of a violation of s. 287.81 (2). The report of conviction
4 and abstract of court record copy of the citation form shall be forwarded to the
5 department.

6 **SECTION 16.** 757.05 (1) (a) of the statutes is amended to read:

7 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
8 state law or for a violation of a municipal or county ordinance except for a violation
9 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a violation of s. 287.81~~
10 (4) (a) to which s. 287.81 (4) (b) 3. applies. for a first violation of s. 23.33 (4c) (a) 2.,
11 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
12 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the
13 time of the violation, or for a violation of state laws or municipal or county ordinances
14 involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety
15 belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty
16 surcharge under ch. 814 in an amount of 26 percent of the fine or forfeiture imposed.
17 If multiple offenses are involved, the penalty surcharge shall be based upon the total
18 fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or
19 in part, the penalty surcharge shall be reduced in proportion to the suspension.

20 **SECTION 17.** 814.85 (1) (a) of the statutes is amended to read:

21 814.85 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,
22 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
23 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the
24 time of the violation, for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b) 3.
25 applies. or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under

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1 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68 court support
2 services surcharge from any person, including any governmental unit as defined in
3 s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

4 **SECTION 18.** 814.86 (1) of the statutes is amended to read:

5 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
6 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
7 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
8 violation, for a violation of s. 287.81 (4) (a) to which s. 287.81 (4) (b) 3. applies, or for
9 a violation under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m),
10 the clerk of circuit court shall charge and collect a \$12 justice information system
11 surcharge from any person, including any governmental unit, as defined in s. 108.02
12 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), or (3) (a) or
13 (b), or 814.63 (1). The justice information system surcharge is in addition to the
14 surcharge listed in sub. (1m).

15 (END)