

2013 Senate Bill 245 (LRB -1949)

An Act to repeal 49.141 (7) (b), 49.141 (9) (title), 49.141 (10) (title) and (b), 49.49 (1) (title) and (a) (intro.), 49.49 (1) (b), 49.49 (2) (title) and (2) (a) (title), 49.49 (2) (b) (title), 49.49 (2) (c) (title), 49.49 (3) (title), 49.49 (3m) (title), 49.49 (3m) (b), 49.49 (4) (title), 49.795 (1) (cm), 49.795 (7), 49.795 (8) (a), (b) and (c) and 49.95; to renumber 49.495 (title) and 49.795 (title) and (1) (intro.); to renumber and amend 49.141 (7) (a), 49.141 (9) (a) to (c), 49.141 (10) (a), 49.49 (1) (a) 1. to 4., 49.49 (1) (c), 49.49 (2) (a), 49.49 (2) (b), 49.49 (2) (c), 49.49 (3), 49.49 (3m) (a), 49.495, 49.795 (1) (a), (b), (c), (d) and (e), 49.795 (2) to (6), 49.795 (8) (d) 1., 49.795 (8) (d) 1m., 49.795 (8) (d) 2. and 49.795 (8) (e) and (f); to consolidate, renumber and amend 49.49 (4) (a) and (b); to amend 49.141 (7) (c) (intro.) and 1., 49.141 (8), 49.32 (8), 49.45 (2) (b) 7. (intro.) and a., and (11), 49.49 (3p) (title), 49.49 (5), 49.49 (7) (d), 49.688 (9) (a), 49.797 (2) (a), 59.54 (23) and 940.11 (2); to repeal and recreate 49.141 (7) (title); and to create 49.835, 49.846 (1), 946.90 (title), 946.90 (1), 946.90 (2), 946.91 (title), (1) and (2) (intro.), 946.92 (3) (a) and 946.93 of the statutes; relating to: applications for public assistance programs, offenses in public assistance programs, granting rule-making authority, and providing a penalty. (FE)

2013

08-07.	S.	Introduced by Senators Darling, Gudex, Grothman, Kedzie, Lazich, Leibham and Olsen; cosponsored by Representatives Nygren, Krug, Knodl, Endsley, Jacque, Kaufert, Kerkman, Kestell, Kleefisch, Nass, J. Ott, Pridemore, Sanfelippo, Schraa and Strachota.	331
08-07.	S.	Read first time and referred to Committee on Health and Human Services	331
08-07.	S.	Fiscal estimate received	
08-07.	S.	Fiscal estimate received	
10-28.	S.	Fiscal estimate received	
11-20.	S.	Public hearing held	
11-21.	S.	LRB correction	500
11-27.	S.	Fiscal estimate received	
12-05.	S.	Senate Amendment 1 offered by Senator Darling (LRB a1265)	513
12-19.	S.	Executive action taken	
12-20.	S.	Report adoption of Senate Amendment 1 recommended by Committee on Health and Human Services, Ayes 5, Noes 0	540
12-20.	S.	Report passage as amended recommended by Committee on Health and Human Services, Ayes 5, Noes 0	540
12-20.	S.	Available for scheduling	

2014

01-13.	S.	Referred to Joint Committee on Finance by Committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	562
01-13.	S.	Withdrawn from joint committee on Finance and made Available for Scheduling by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	562
01-13.	S.	Placed on calendar 1-14-2014 pursuant to Senate Rule 18(1)	562
01-14.	S.	Read a second time	568
01-14.	S.	Senate Amendment 1 adopted	568
01-14.	S.	Ordered to a third reading	568
01-14.	S.	Rules suspended	568
01-14.	S.	Read a third time and passed , Ayes 31, Noes 1	568
01-14.	S.	Ordered immediately messaged	568
01-15.	A.	Received from Senate	533
01-15.	A.	Read first time and referred to committee on State Affairs and Government Operations	533
01-24.	A.	Fiscal estimate received	
02-05.	A.	Public hearing held	
02-12.	A.	Executive action taken	
02-18.	A.	Report concurrence recommended by Committee on State Affairs and Government Operations, Ayes 15, Noes 1	650
02-18.	A.	Referred to Committee on Rules	651
02-18.	A.	Placed on calendar 2-20-2014 by Committee on Rules	
02-20.	A.	Read a second time	
02-20.	A.	Assembly Amendment 1 offered by Representatives Goyke and Genrich (LRB a1532)	
02-20.	A.	Assembly Amendment 1 laid on table, Ayes 56, Noes 39	
02-20.	A.	Ordered to a third reading	
02-20.	A.	Rules suspended	
02-20.	A.	Read a third time and concurred in	
02-20.	A.	Ordered immediately messaged	
02-21.	S.	Received from Assembly concurred in	707

AMB

2013
ENROLLED BILL

13en S B-245

ADOPTED DOCUMENTS:

Orig **Engr** **SubAmdt**

13-1949/2

Amendments to above (if none, write "NONE"): SA 1 — a 1265/1

Corrections - show date (if none, write "NONE"): NOV. 20, 2013

Topic Rel

2-25-14

Date

JR Miller

Enrolling Drafter



State of Wisconsin
2013-2014 LEGISLATURE

CORRECTIONS IN:

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Prepared by the Legislative Reference Bureau
(November 20, 2013)

1. Page 16, line 5: delete “person violated sub. (2) by trading traded” and substitute “person traded violated sub. (2) by trading”.

****NOTE: The word “traded” is replaced by the underscored “trading” and should have been stricken.

(END)

CORR



2013 SENATE BILL 245

August 7, 2013 - Introduced by Senators DARLING, GUDEx, GROTHMAN, KEDZIE, LAZICH, LEIBHAM and OLSEN, cosponsored by Representatives NYGREN, KRUG, KNODL, ENDSLEY, JACQUE, KAUFERT, KERKMAN, KESTELL, KLEEFISCH, NASS, J. OTT, PRIDEMORE, SANFELIPPO, SCHRAA and STRACHOTA. Referred to Committee on Health and Human Services.

1 **AN ACT to repeal** 49.141 (7) (b), 49.141 (9) (title), 49.141 (10) (title) and (b), 49.49
2 (1) (title) and (a) (intro.), 49.49 (1) (b), 49.49 (2) (title) and (2) (a) (title), 49.49
3 (2) (b) (title), 49.49 (2) (c) (title), 49.49 (3) (title), 49.49 (3m) (title), 49.49 (3m)
4 (b), 49.49 (4) (title), 49.795 (1) (cm), 49.795 (7), 49.795 (8) (a), (b) and (c) and
5 49.95; **to renumber** 49.495 (title) and 49.795 (title) and (1) (intro.); **to**
6 **renumber and amend** 49.141 (7) (a), 49.141 (9) (a) to (c), 49.141 (10) (a), 49.49
7 (1) (a) 1. to 4., 49.49 (1) (c), 49.49 (2) (a), 49.49 (2) (b), 49.49 (2) (c), 49.49 (3), 49.49
8 (3m) (a), 49.495, 49.795 (1) (a), (b), (c), (d) and (e), 49.795 (2) to (6), 49.795 (8)
9 (d) 1., 49.795 (8) (d) 1m., 49.795 (8) (d) 2. and 49.795 (8) (e) and (f); **to**
10 **consolidate, renumber and amend** 49.49 (4) (a) and (b); **to amend** 49.141
11 (7) (c) (intro.) and 1., 49.141 (8), 49.32 (8), 49.45 (2) (b) 7. (intro.) and a., and (11),
12 49.49 (3p) (title), 49.49 (5), 49.49 (7) (d), 49.688 (9) (a), 49.797 (2) (a), 59.54 (23)
13 and 940.11 (2); **to repeal and recreate** 49.141 (7) (title); and **to create** 49.835,
14 49.846 (1), 946.90 (title), 946.90 (1), 946.90 (2), 946.91 (title), (1) and (2) (intro.),

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1 946.92 (3) (a) and 946.93 of the statutes; **relating to:** applications for public
2 assistance programs, offenses in public assistance programs, granting
3 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, various offenses related to the Medical Assistance program (MA), Wisconsin Works (W-2), the federal Supplemental Nutrition Assistance Program, formerly known as the food stamp program and currently known in Wisconsin as FoodShare, and other public assistance programs administered by the Department of Children and Families (DCF) and the Department of Health Services (DHS) (public assistance programs) are subject to criminal penalties. For example, a person who makes or causes to be made any false statement or representation of a material fact in an application for a benefit or payment, or for use in determining rights to any benefit or payment, under MA is subject to a Class H felony. Similarly, a person who knowingly and willfully makes or causes to be made any false statement or representation of a material fact in an application for W-2 benefits or payments may be fined not more than \$10,000, imprisoned for not more than nine months, or both. This bill moves offenses related to public assistance programs to the chapter of the Wisconsin Statutes that relates to crimes against government and its administration. Specifically, under the bill, that chapter of the Wisconsin Statutes contains provisions related to W-2 fraud, MA fraud, FoodShare fraud, and general public assistance fraud.

Under current law, the Department of Justice (DOJ) or a district attorney is authorized to prosecute violations of criminal laws affecting MA. Under the bill, DOJ or a district attorney is authorized to prosecute violations of criminal laws affecting any public assistance program, including W-2, FoodShare, and MA.

Under current law, any person who makes any statement in a written application for public assistance is considered to have made an admission as to the existence, correctness, or validity of any fact stated, which may be used in an enforcement action. Under the bill, an employee who accepts an application for public assistance is authorized to administer an oath to the applicant that the information given is true and correct to the best of the applicant's knowledge. The bill also requires DCF and DHS to promulgate rules providing standards and procedures for the administration of such an oath.

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:

4 **SECTION 1.** 49.141 (7) (title) of the statutes is repealed and recreated to read:

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1 49.141 (7) (title) SUSPENSIONS.

2 **SECTION 2.** 49.141 (7) (a) of the statutes is renumbered 946.90 (3) and amended
3 to read:

4 946.90 (3) ~~A person who is convicted of violating sub. (6) in connection with the~~
5 Whoever violates sub. (2) by furnishing by that person of items or services for which
6 payment is or may be made under Wisconsin ~~works~~ Works is guilty of a Class H
7 felony.

8 **SECTION 3.** 49.141 (7) (b) of the statutes is repealed.

9 **SECTION 4.** 49.141 (7) (c) (intro.) and 1. of the statutes are amended to read:

10 49.141 (7) (c) (intro.) Except as provided in par. (d), in addition to the penalties
11 applicable under ~~par. (a) or (b) s. 946.90 (2) or (3)~~, a person shall be suspended from
12 participating in Wisconsin ~~works~~ Works for a period of 10 years, beginning on the
13 date of conviction, if the person is convicted in a federal or state court for any of the
14 following:

15 1. Violating sub. (6) (a) ~~or s. 946.90 (2) (a)~~ with respect to his or her identity or
16 place of residence for the purpose of receiving simultaneously from this state and at
17 least one other state assistance funded by a block grant under Title I of the Federal
18 Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

19 **SECTION 5.** 49.141 (8) of the statutes is amended to read:

20 49.141 (8) DAMAGES. If a person is convicted under ~~sub. (6) s. 946.90 (2) or (3)~~,
21 the state has a cause of action for relief against the person in an amount equal to 3
22 times the amount of actual damages sustained as a result of any excess payments
23 made in connection with the offense for which the conviction was obtained. Proof by
24 the state of a conviction under ~~sub. (6) s. 946.90 (2) or (3)~~ is conclusive proof in a civil
25 action of the state's right to damages and the only issue in controversy shall be the

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1 amount, if any, of the actual damages sustained. Actual damages consist of the total
2 amount of excess payments, any part of which is paid with state funds. In a civil
3 action under this subsection, the state may elect to file a motion in expedition of the
4 action. Upon receipt of the motion, the presiding judge shall expedite the action.

5 **SECTION 6.** 49.141 (9) (title) of the statutes is repealed.

6 **SECTION 7.** 49.141 (9) (a) to (c) of the statutes are renumbered 946.90 (4) (a) to
7 (c), and 946.90 (4) (a), (b) and (c) 1., as renumbered, are amended to read:

8 946.90 (4) (a) Whoever solicits or receives ~~any remuneration in cash or in-kind~~
9 money, goods, services, or any other thing of value, in return for referring an
10 individual to a person for the furnishing or arranging for the furnishing of any item
11 or service for which payment may be made in whole or in part under Wisconsin works
12 Works, or in return for purchasing, leasing, ordering, or arranging for or
13 recommending purchasing, leasing, or ordering any good, facility, service, or item for
14 which payment may be made in whole or in part under Wisconsin works Works, is
15 guilty of a Class H felony, except that, notwithstanding the maximum fine specified
16 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

17 (b) Whoever offers or ~~pays any remuneration in cash or in-kind~~ provides
18 money, goods, services, or any other thing of value to any person to induce the person
19 to refer an individual to a person for the furnishing or arranging for the furnishing
20 of any item or service for which payment may be made in whole or in part under
21 Wisconsin works Works, or to purchase, lease, order, or arrange for or recommend
22 purchasing, leasing, or ordering any good, facility, service or item for which payment
23 may be made in whole or in part under any provision of Wisconsin works Works, is
24 guilty of a Class H felony, except that, notwithstanding the maximum fine specified
25 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

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1 (c) 1. A discount or other reduction in price obtained by a provider of services
2 or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed
3 and appropriately reflected in the costs claimed or charges made by the provider or
4 entity under ~~Wisconsin works~~ Works.

5 **SECTION 8.** 49.141 (10) (title) and (b) of the statutes are repealed.

6 **SECTION 9.** 49.141 (10) (a) of the statutes is renumbered 946.90 (5) and
7 amended to read:

8 946.90 (5) A provider ~~may not who~~ knowingly ~~impose~~ imposes upon a recipient
9 participant in Wisconsin Works charges in addition to payments received by the
10 provider for services under ~~Wisconsin works~~ Works or knowingly ~~impose~~ imposes
11 direct charges upon a recipient participant in Wisconsin Works in lieu of obtaining
12 payment under ~~Wisconsin works~~ Works unless Works is guilty of a Class H felony, except
13 that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may
14 be fined not more than \$25,000. This subsection does not apply if benefits or services
15 are not provided under ~~Wisconsin works~~ Works and the recipient Wisconsin Works
16 participant is advised of this fact prior to receiving the service.

17 **SECTION 10.** 49.32 (8) of the statutes is amended to read:

18 49.32 (8) PERIODIC EARNINGS CHECK BY DEPARTMENT. The department shall make
19 a periodic check of the amounts earned by recipients of aid to families with dependent
20 children under s. 49.19 and by participants under ~~Wisconsin works~~ under ss. 49.141
21 to 49.161 through a check of the amounts credited to the recipient's social security
22 number. The department shall make an investigation into any discrepancy between
23 the amounts credited to a social security number and amounts reported as income
24 on the declaration application and take appropriate action under s. ~~49.95~~ 946.93
25 when warranted. The department shall use the state wage reporting system under

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1 1985 Wisconsin Act 17, section 65 (1), when the system is implemented, to make
2 periodic earnings checks.

3 **SECTION 11.** 49.45 (2) (b) 7. (intro.) and a., and (11) of the statutes are amended
4 to read:

5 49.45 (2) (b) 7. (intro.) Require, as a condition of certification under par. (a) 11.,
6 all providers of a specific service that is among those enumerated under s. 49.46 (2),
7 49.47 (6) (a), or 49.471 (11), as specified in this subdivision, to file with the
8 department a surety bond issued by a surety company licensed to do business in this
9 state. Providers subject to this subdivision provide those services specified under s.
10 49.46 (2), 49.47 (6) (a), or 49.471 (11) for which providers have demonstrated
11 significant potential to violate s. 49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a),
12 or (4m) (a) or 946.91 (2), (3) (a) or (b), (4), (5), or (6), to require recovery under par.
13 (a) 10., or to need additional sanctions under par. (a) 13. The surety bond shall be
14 payable to the department in an amount that the department determines is
15 reasonable in view of amounts of former recoveries against providers of the specific
16 service and the department's costs to pursue those recoveries. The department shall
17 promulgate rules to implement this subdivision that specify all of the following:

18 a. Services under ~~medical assistance~~ Medical Assistance for which providers
19 have demonstrated significant potential to violate s. 49.49 (1) (a), (2) (a) or (b), (3),
20 (3m) (a), (3p), (4) (a), or (4m) (a) or 946.91 (2), (3) (a) or (b), (4), (5), or (6), to require
21 recovery under par. (a) 10., or to need additional sanctions under par. (a) 13.

22 (11) PENALTY. Any person who receives or assists another in receiving
23 assistance under this section, to which the recipient is not entitled, shall be subject
24 to the penalties under ~~s. 49.95~~ ss. 946.91 and 946.93.

25 **SECTION 12.** 49.49 (1) (title) and (a) (intro.) of the statutes are repealed.

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1 **SECTION 13.** 49.49 (1) (a) 1. to 4. of the statutes are renumbered 946.91 (2) (a)
2 to (d) and amended to read:

3 946.91 (2) (a) ~~Knowingly and willfully make~~ Intentionally makes or ~~cause~~
4 causes to be made any false statement or representation of a material fact in any
5 application for any Medical Assistance benefit or payment.

6 (b) ~~Knowingly and willfully make~~ Intentionally makes or ~~cause~~ causes to be
7 made any false statement or representation of a material fact for use in determining
8 ~~rights to such~~ eligibility for any Medical Assistance benefit or payment.

9 (c) Having knowledge of the occurrence of any event affecting the initial or
10 continued ~~right to~~ eligibility for any such Medical Assistance benefit or payment or
11 the initial or continued ~~right to~~ eligibility for any such benefit or payment of any
12 other individual in whose behalf he or she has applied for or is receiving such benefit
13 or payment, ~~conceal~~ conceals or ~~fail~~ fails to disclose such event with an intent to
14 fraudulently to secure such benefit or payment either in a greater amount or
15 quantity than is due or when no such benefit or payment is authorized.

16 (d) Having ~~made application~~ applied to receive any such Medical Assistance
17 benefit or payment for the use and benefit of another and having received it,
18 knowingly and willfully ~~convert such~~ converts the benefit or payment or any part
19 thereof to a use ~~other than for the use and~~ that is not for the benefit of such other
20 person.

21 **SECTION 14.** 49.49 (1) (b) of the statutes is repealed.

22 **SECTION 15.** 49.49 (1) (c) of the statutes is renumbered 49.49 (1d) and amended
23 to read:

24 49.49 (1d) DAMAGES. If any person is convicted under ~~this subsection~~ s. 946.91
25 (2), the state shall have a cause of action for relief against such person in an amount

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1 3 times the amount of actual damages sustained as a result of any excess payments
2 made in connection with the offense for which the conviction was obtained. Proof by
3 the state of a conviction under ~~this section~~ s. 946.91 (2) in a civil action shall be
4 conclusive regarding the state's right to damages and the only issue in controversy
5 shall be the amount, if any, of the actual damages sustained. Actual damages shall
6 consist of the total amount of excess payments, any part of which is paid by state
7 funds. In any such civil action the state may elect to file a motion in expedition of
8 the action. Upon receipt of the motion, the presiding judge shall expedite the action.

9 **SECTION 16.** 49.49 (2) (title) and (2) (a) (title) of the statutes are repealed.

10 **SECTION 17.** 49.49 (2) (a) of the statutes is renumbered 946.91 (3) (a) and
11 amended to read:

12 946.91 (3) (a) ~~Any person who~~ Whoever solicits or receives ~~any remuneration,~~
13 ~~including any kickback, bribe, or rebate, directly or, indirectly, overtly, or covertly, in~~
14 ~~cash or in kind, money, goods, services, or any other thing of value~~ in return for
15 referring an individual to a person for the furnishing or arranging for the furnishing
16 of any item or service for which payment may be made in whole or in part under ~~a~~
17 ~~medical assistance program~~ Medical Assistance, or in return for purchasing, leasing,
18 ordering, or arranging for or recommending purchasing, leasing, or ordering any
19 good, facility, service, or item for which payment may be made in whole or in part
20 under ~~a medical assistance program~~ Medical Assistance, is guilty of a Class H felony,
21 except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the
22 person may be fined not more than \$25,000.

23 **SECTION 18.** 49.49 (2) (b) (title) of the statutes is repealed.

24 **SECTION 19.** 49.49 (2) (b) of the statutes is renumbered 946.91 (3) (b) and
25 amended to read:

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1 946.91 (3) (b) Whoever offers or pays ~~any remuneration including any~~
2 ~~kickback, bribe, or rebate~~ provides, directly ~~or~~, indirectly, overtly, or covertly, in cash
3 ~~or in kind~~ money, goods, services, or any other thing of value to any person to induce
4 such person to refer an individual to a person for the furnishing or arranging for the
5 furnishing of any item or service for which payment may be made in whole or in part
6 under ~~a medical assistance program~~ Medical Assistance, or to purchase, lease, order,
7 or arrange for or recommend purchasing, leasing, or ordering any good, facility,
8 service or item for which payment may be made in whole or in part under ~~a medical~~
9 ~~assistance program~~ Medical Assistance, is guilty of a Class H felony, except that,
10 notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be
11 fined not more than \$25,000.

12 **SECTION 20.** 49.49 (2) (c) (title) of the statutes is repealed.

13 **SECTION 21.** 49.49 (2) (c) of the statutes is renumbered 946.91 (3) (c) and
14 amended to read:

15 946.91 (3) (c) This subsection ~~shall~~ does not apply to any of the following:

16 1. A discount or other reduction in price obtained by a provider of services or
17 other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed
18 and appropriately reflected in the costs claimed or charges made by the provider or
19 entity under ~~a medical assistance program~~ Medical Assistance.

20 2. ~~Any~~ An amount paid by an employer to an employee who has a bona fide
21 employment relationship with such employer for employment in the provision of
22 covered items or services.

23 **SECTION 22.** 49.49 (3) (title) of the statutes is repealed.

24 **SECTION 23.** 49.49 (3) of the statutes is renumbered 946.91 (4) and amended
25 to read:

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1 946.91 (4) ~~No person may~~ Whoever knowingly and willfully ~~make~~ makes or
2 ~~cause~~ causes to be made, or ~~induce~~ induces or ~~seek~~ seeks to induce the making of, any
3 false statement or representation of a material fact with respect to the conditions or
4 operation of any institution or facility in order that such institution or facility may
5 qualify either upon initial certification or upon recertification as a hospital, skilled
6 nursing facility, intermediate care facility, or home health agency. ~~A person who~~
7 ~~violates this subsection~~ is guilty of a Class H felony, except that, notwithstanding the
8 maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than
9 \$25,000.

10 **SECTION 24.** 49.49 (3m) (title) of the statutes is repealed.

11 **SECTION 25.** 49.49 (3m) (a) of the statutes is renumbered 946.91 (5), and 946.91
12 (5) (intro.), (a), (b) and (c), as renumbered, are amended to read:

13 946.91 (5) (intro.) ~~No provider may~~ Whoever knowingly ~~impose~~ imposes upon
14 a Medical Assistance recipient charges in addition to payments received for services
15 under ss. 49.45 to 49.471 or knowingly ~~impose~~ imposes direct charges upon a
16 recipient in lieu of obtaining payment under ss. 49.45 to 49.471 ~~except under the~~
17 ~~following conditions~~ is guilty of a Class H felony, except that, notwithstanding the
18 maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than
19 \$25,000. This subsection does not apply under any of the following circumstances:

20 (a) Benefits or services are not provided under s. 49.46 (2) or 49.471 (11) and
21 the Medical Assistance recipient is advised of this fact prior to receiving the service.

22 (b) ~~If an~~ An applicant is determined to be eligible retroactively under s. 49.46
23 (1) (b), 49.47 (4) (d), or 49.471 ~~and~~, a provider bills the applicant directly for services
24 and benefits rendered during the retroactive period, the provider shall, upon
25 notification of the applicant's retroactive eligibility, ~~submit claims~~ submits a claim

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1 for payment under s. 49.45 for covered services or benefits rendered to the recipient
2 during the retroactive period. ~~Upon receipt of payment under s. 49.45, the provider~~
3 ~~shall reimburse, and the provider reimburses~~ the recipient or other person who has
4 made prior payment to the provider for services provided to the recipient during the
5 retroactive eligibility period, by the amount of the prior payment made upon receipt
6 of payment under s. 49.45.

7 (c) Benefits or services are provided for which recipient copayment,
8 coinsurance, or deductible is required under s. 49.45 (18), not to exceed maximum
9 amounts allowable under 42 CFR 447.53 to 447.58, or for which recipient copayment
10 or coinsurance is required under s. 49.471 (11).

11 **SECTION 26.** 49.49 (3m) (b) of the statutes is repealed.

12 **SECTION 27.** 49.49 (3p) (title) of the statutes is amended to read:

13 49.49 (3p) (title) ~~OTHER PROHIBITED PROVIDER CHARGES.~~

14 **SECTION 28.** 49.49 (4) (title) of the statutes is repealed.

15 **SECTION 29.** 49.49 (4) (a) and (b) of the statutes are consolidated, renumbered
16 946.91 (6) and amended to read:

17 946.91 (6) ~~No person~~ Whoever, in connection with ~~the medical assistance~~
18 ~~program~~ Medical Assistance when the cost of the services provided to the patient is
19 paid for in whole or in part by the state, ~~may knowingly and willfully charge, solicit,~~
20 ~~accept or receive~~ intentionally charges, solicits, accepts, or receives, in addition to
21 any amount otherwise required to be paid under ~~a medical assistance program~~
22 Medical Assistance, any gift, money, donation, or other consideration, other than a
23 charitable, religious, or philanthropic contribution from an organization or from a
24 person unrelated to the patient, as a precondition of admitting a patient to a hospital,
25 skilled nursing facility, or intermediate care facility, or as a requirement for the

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1 patient's continued stay in such a facility. ~~(b) A person who violates this subsection~~
2 is guilty of a Class H felony, except that, notwithstanding the maximum fine specified
3 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

4 **SECTION 30.** 49.49 (5) of the statutes is amended to read:

5 **49.49 (5) COUNTY COLLECTION.** Any county may retain ~~15%~~ 15 percent of state
6 ~~medical assistance~~ Medical Assistance funds that are recovered due to the efforts of
7 a county employee or officer or, if the county initiates action by the department of
8 justice, due to the efforts of the department of justice under s. ~~49.495~~ 49.846. This
9 subsection applies only to recovery of medical assistance that was provided as a
10 result of fraudulent activity by a recipient or by a provider.

11 **SECTION 31.** 49.49 (7) (d) of the statutes is amended to read:

12 **49.49 (7) (d)** A commission's imposition of an assessment described under par.
13 (b), a member's payment of the assessment as described under par. (c), and
14 acceptance of the payment by the commission do not constitute conduct prohibited
15 under ~~sub. (4) s. 946.91 (6)~~ or prohibited under s. DHS 106.04 (3), Wis. Adm. Code,
16 in effect on May 26, 2010. It is the intent of the legislature to create a mechanism
17 whereby 2 or more political subdivisions may share in the operation, use, and
18 funding of a nursing home or intermediate care facility without violating 42 USC
19 1320a-7b (d) or 42 USC 1396a (a) (25) (C).

20 **SECTION 32.** 49.495 (title) of the statutes is renumbered 49.846 (title).

21 **SECTION 33.** 49.495 of the statutes is renumbered 49.846 (2) and amended to
22 read:

23 **49.846 (2)** The department of justice or the district attorney may institute,
24 manage, control, and direct, in the proper county, any prosecution for violation of
25 criminal laws affecting ~~the medical~~ a public assistance program, including ~~but not~~

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1 ~~limited to laws in this chapter, chs. 939 to 951 relating to medical assistance~~
2 ~~contained in this subchapter Medical Assistance, Wisconsin Works, the food stamp~~
3 ~~program, or any other public assistance program, and laws affecting the health,~~
4 ~~safety, and welfare of public assistance program recipients of ~~medical assistance.~~ For~~
5 ~~this purpose the department of justice shall have and exercise all powers conferred~~
6 ~~upon district attorneys in such cases. ~~The~~ If a prosecution under this section involves~~
7 ~~a person holding a license granted by the medical examining board or an interested~~
8 ~~affiliated credentialing board, the department of justice or district attorney shall~~
9 ~~notify the medical examining board or the interested affiliated credentialing board~~
10 ~~of any such the prosecution of a person holding a license granted by the board or~~
11 ~~affiliated credentialing board.~~

12 **SECTION 34.** 49.688 (9) (a) of the statutes is amended to read:

13 49.688 (9) (a) The department shall promulgate rules relating to prohibitions
14 on fraud that are substantially similar to applicable provisions under s. ~~49.49 (1) (a)~~
15 946.91 (2).

16 **SECTION 35.** 49.795 (title) and (1) (intro.) of the statutes are renumbered 946.92
17 (title) and (1) (intro.).

18 **SECTION 36.** 49.795 (1) (a), (b), (c), (d) and (e) of the statutes are renumbered
19 946.92 (1) (a), (b), (c), (d) and (e), and 946.92 (1) (b), (c) and (d), as renumbered, are
20 amended to read:

21 946.92 (1) (b) "Food" means items ~~which~~ that may be purchased using food
22 ~~coupons~~ stamp program benefits under 7 USC 2012 (g) and 2016 (b).

23 (c) "Food stamp program" means the federal food stamp program under 7 USC
24 2011 to ~~2029~~ 2036a.

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1 (d) "Supplier" means a retail grocery store or other person authorized by the
2 federal department of agriculture to accept food ~~coupons~~ stamp program benefits in
3 exchange for food under the food stamp program.

4 **SECTION 37.** 49.795 (1) (cm) of the statutes is repealed.

5 **SECTION 38.** 49.795 (2) to (6) of the statutes are renumbered 946.92 (2) (a) to
6 (f), and 946.92 (2) (c), (d), (e) and (f), as renumbered, are amended to read:

7 946.92 (2) (c) No person may knowingly issue food ~~coupons~~ stamp program
8 benefits to a person who is not an eligible person or knowingly issue food ~~coupons~~
9 stamp program benefits to an eligible person in excess of the amount for which the
10 person's household is eligible.

11 (d) No eligible person may knowingly transfer food ~~coupons~~ stamp program
12 benefits except to purchase food from a supplier or knowingly obtain or use food
13 ~~coupons~~ stamp program benefits for which the person's household is not eligible.

14 (e) No supplier may knowingly obtain food ~~coupons~~ stamp program benefits
15 except as payment for food or knowingly obtain food ~~coupons~~ stamp program benefits
16 from a person who is not an eligible person.

17 (f) No unauthorized person may knowingly obtain, possess, transfer, or use food
18 ~~coupons~~ stamp program benefits.

19 **SECTION 39.** 49.795 (7) of the statutes is repealed.

20 **SECTION 40.** 49.795 (8) (a), (b) and (c) of the statutes are repealed.

21 **SECTION 41.** 49.795 (8) (d) 1. of the statutes is renumbered 946.92 (3) (b) and
22 amended to read:

23 946.92 (3) (b) In addition to the penalties applicable under par. (a), ~~(b) or (e)~~,
24 the court shall suspend a person who violates ~~this section~~ sub. (2) from participation
25 in the food stamp program as follows:

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1 1. For a first ~~offense~~ conviction under this section, for not less than one year.
2 ~~The court may extend the suspension by~~ and not more than ~~18 months~~ 2 years and
3 6 months.

4 2. For a 2nd ~~offense~~ conviction under this section, for not less than 2 years. ~~The~~
5 ~~court may extend the suspension by~~ and not more than ~~18 months~~ 3 years and 6
6 months.

7 3. For a 3rd ~~offense~~ conviction under this section, permanently.

8 **SECTION 42.** 49.795 (8) (d) 1m. of the statutes is renumbered 946.92 (3) (c) and
9 amended to read:

10 946.92 (3) (c) In addition to the penalties applicable under par. (a), ~~(b) or (c),~~
11 a court shall permanently suspend from the food stamp program a person who has
12 been convicted of an offense under 7 USC 2024 (b) or (c) involving an item covered
13 by 7 USC 2024 (b) or (c) having a value of \$500 or more.

14 **SECTION 43.** 49.795 (8) (d) 2. of the statutes is renumbered 49.796 and amended
15 to read:

16 **49.796 Food stamp reinstatement.** The A person may apply to ~~the a~~
17 multicounty consortium, as defined in s. 49.78 (1) (br), or ~~the a~~ federally recognized
18 American Indian tribal governing body or, if the person is a supplier, as defined in
19 s. 946.92 (1) (d), to the federal department of agriculture for reinstatement of benefits
20 following ~~the a~~ period of suspension imposed under s. 946.92, if the suspension is not
21 permanent.

22 **SECTION 44.** 49.795 (8) (e) and (f) of the statutes are renumbered 946.92 (3) (d)
23 and (e) and amended to read:

24 946.92 (3) (d) 1. ~~If a court finds that~~ a person ~~traded~~ violated sub. (2) by trading
25 a controlled substance, as defined in s. 961.01 (4), for food ~~coupons~~ stamp program

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1 benefits, the court shall suspend the person from participation in the food stamp
2 program as follows:

3 a. Upon ~~the first such finding~~ a first conviction, for 2 years.

4 b. Upon ~~the a 2nd such finding~~ conviction, permanently.

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5 2. If ~~a court finds that a~~ person violated sub. (2) by trading ~~traded~~ firearms,
6 ammunition, or explosives for food ~~coupons~~ stamp program benefits, the court shall
7 suspend the person permanently from participation in the food stamp program.

8 (e) Notwithstanding ~~par. (d)~~ pars. (b) and (c), in addition to the penalties
9 applicable under par. (a), ~~(b) or (c)~~, the court shall suspend from the food stamp
10 program for a period of 10 years a person who violates sub. (2) by fraudulently
11 misstates misstating or misrepresents misrepresenting his or her identity or place
12 of residence for the purpose of receiving multiple benefits simultaneously under the
13 food stamp program.

14 SECTION 45. 49.797 (2) (a) of the statutes is amended to read:

15 49.797 (2) (a) Notwithstanding s. 46.028 and except as provided in par. (b) and
16 sub. (8), the department shall administer a statewide program to deliver food stamp
17 benefits to recipients of food stamp benefits by an electronic benefit transfer system.
18 All suppliers, as defined in s. 49.795 946.92 (1) (d), may participate in the delivery
19 of food stamp benefits under the electronic benefit transfer system. The department
20 shall explore methods by which nontraditional retailers, such as farmers' markets,
21 may participate in the delivery of food stamp benefits under the electronic benefit
22 transfer system.

23 SECTION 46. 49.835 of the statutes is created to read:

24 49.835 Affirmation of statements in applications. (1) A person who

25 makes a statement in a written application for any aid or benefit provided under this

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1 chapter is considered to have made an admission as to the existence, correctness, or
2 validity of any fact stated. Such a statement is prima facie evidence against the
3 person who made it in any complaint, information, or indictment, or in any action
4 brought for enforcement of any provision of this chapter.

5 (2) An employee of a county department, a Wisconsin Works agency, a
6 multicounty consortium, the department of health services, or the department of
7 children and families who accepts an application for any aid or benefit under this
8 chapter has the authority to administer an oath to the applicant that the information
9 given is true and correct to the best of the applicant's knowledge.

10 (3) The department of children and families and the department of health
11 services shall promulgate rules that specify standards and procedures for the
12 administration of an oath to an applicant for any aid or benefit under this chapter
13 that the information provided by the applicant is true and correct to the best of the
14 applicant's knowledge.

15 **SECTION 47.** 49.846 (1) of the statutes is created to read:

16 49.846 (1) In this section, "public assistance program" means any program
17 administered by the department of health services or the department of children and
18 families under this chapter under which the department administering the program
19 provides services, benefits, or other assistance to individuals or families.

20 **SECTION 48.** 49.95 of the statutes is repealed.

21 **SECTION 49.** 59.54 (23) of the statutes is amended to read:

22 59.54 (23) PUBLIC ASSISTANCE; FALSE REPRESENTATION. The board may enact and
23 enforce an ordinance to prohibit conduct that is the same as or similar to conduct that
24 is prohibited by s. 49.95 (1) 946.93 (2) and provide a forfeiture for a violation of the
25 ordinance.

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1 **SECTION 50.** 940.11 (2) of the statutes is amended to read:

2 940.11 (2) Whoever hides or buries a corpse, with intent to conceal a crime or
3 avoid apprehension, prosecution, or conviction for a crime or notwithstanding s.
4 ~~49.141 (7), 49.49 (1), or 49.795~~ 946.90 (2) or (3), 946.91 (2), 946.92, or 946.93 (2) or
5 (3) with intent to collect benefits under one of these sections the assistance program
6 for families with dependent children administered under ss. 49.141 to 49.161, the
7 Medical Assistance program administered under subch. IV of ch. 49, or the food
8 stamp program, as defined in s. 49.79 (1) (c), is guilty of a Class G felony.

9 **SECTION 51.** 946.90 (title) of the statutes is created to read:

10 **946.90 (title) Wisconsin Works fraud.**

11 **SECTION 52.** 946.90 (1) of the statutes is created to read:

12 946.90 (1) In this section:

13 (a) "Provider" means a Wisconsin Works agency, a person that contracts with
14 a Wisconsin Works agency to provide services to a participant in Wisconsin Works,
15 or a person that provides child care for reimbursement under s. 49.155.

16 (b) "Wisconsin Works" means the assistance program for families with
17 dependent children administered under ss. 49.141 to 49.161.

18 (c) "Wisconsin Works agency" has the meaning given in s. 49.001 (9).

19 **SECTION 53.** 946.90 (2) of the statutes is created to read:

20 946.90 (2) Whoever does any of the following is guilty of a Class A
21 misdemeanor:

22 (a) Intentionally makes or causes to be made any false statement or
23 representation of a material fact in any application for or receipt of any Wisconsin
24 Works benefit or payment.

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1 (b) Having knowledge of the occurrence of any event affecting the initial or
2 continued eligibility for a Wisconsin Works benefit or payment under Wisconsin
3 Works, conceals or fails to disclose that event with an intent to fraudulently secure
4 a Wisconsin Works benefit or payment either in a greater amount or quantity than
5 is due or when no such benefit or payment is authorized.

6 **SECTION 54.** 946.91 (title), (1) and (2) (intro.) of the statutes are created to read:

7 **946.91 (title) Medical Assistance fraud.** (1) In this section:

8 (a) "Facility" means a nursing home or a community-based residential facility
9 that is licensed under s. 50.03 and that is certified by the department of health
10 services as a provider of aid under Medical Assistance.

11 (b) "Medical Assistance" means the program providing aid under subch. IV of
12 ch. 49, except ss. 49.468 and 49.471.

13 (c) "Provider" means a person, corporation, limited liability company,
14 partnership, incorporated business, or professional association, and any agent or
15 employee thereof, who provides services under Medical Assistance.

16 (2) (intro.) Whoever does any of the following is guilty of a Class H felony, except
17 that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may
18 be fined not more than \$25,000:

19 **SECTION 55.** 946.92 (3) (a) of the statutes is created to read:

20 946.92 (3) (a) Whoever violates sub. (2) is subject to the following penalties:

21 1. If the value of the food stamp program benefits does not exceed \$100, a Class
22 B misdemeanor.

23 2. Except as provided in subd. 3., if the value of the food stamp program benefits
24 exceeds \$100, but is less than \$5,000, a Class I felony.

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1 3. If the value of the food stamp program benefits exceeds \$100, but is less than
2 \$5,000, and the person has a prior conviction under this section, a Class H felony.

3 4. If the value of the food stamp program benefits is \$5,000 or more, a Class G
4 felony.

5 **SECTION 56.** 946.93 of the statutes is created to read:

6 **946.93 Public assistance fraud. (1)** In this section, "public assistance"
7 means any aid, benefit, or services provided under ch. 49.

8 **(2)** Whoever intentionally makes or causes to be made any false statement or
9 representation of material fact in any application for or receipt of public assistance
10 is guilty of a Class A misdemeanor.

11 **(3)** No person may do any of the following:

12 **(a)** Having knowledge of an event affecting the initial or continued eligibility
13 for public assistance, conceal or fail to disclose that event with an intent to
14 fraudulently secure public assistance, including payment either in a greater amount
15 or quantity than is due or when no such benefit or payment is authorized.

16 **(b)** Receive any income or assets and fail to notify the public assistance agency
17 within 10 days after receiving the income or assets, unless a different time period is
18 required under the applicable public assistance program.

19 **(c)** Fail to notify the public assistance agency within 10 days of any change in
20 circumstances for which notification by the recipient must be provided under law,
21 unless a different time period is required under the applicable public assistance
22 program.

23 **(d)** Receive a voucher under a public assistance program for goods or services
24 and use the funding granted under the voucher for purposes that are not authorized
25 by the public assistance agency.

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- 1 (e) Whoever violates par. (a), (b), (c), or (d) is subject to the following penalties:
- 2 1. If the value of the payment or benefit does not exceed \$300, a Class B
- 3 forfeiture.
- 4 2. If the value of the payment or benefit is more than \$300 but does not exceed
- 5 \$1,000, a Class B misdemeanor.
- 6 3. If the value of the payment or benefit is more than \$1,000 but does not exceed
- 7 \$2,000, a Class A misdemeanor.
- 8 4. If the value of the payment or benefit is more than \$2,000 but does not exceed
- 9 \$5,000, a Class I felony.
- 10 5. If the value of the payment or benefit is more than \$5,000 but does not exceed
- 11 \$10,000, a Class H felony.
- 12 6. If the value of the payment or benefit is more than \$10,000, a Class G felony.
- 13 (4) A person who obtains money, goods, services, or any other thing of value
- 14 because he or she sends or brings a person to a county department, federally
- 15 recognized American Indian tribe or band, multicounty consortium, or Wisconsin
- 16 Works agency for the purpose of obtaining public assistance is guilty of a Class C
- 17 misdemeanor.
- 18 (5) (a) Whoever solicits or receives money, goods, services, or any other thing
- 19 of value in return for referring an individual to a person for the furnishing or
- 20 arranging for the furnishing of any item or service for which a public assistance
- 21 payment may be made in whole or in part, or in return for purchasing, leasing,
- 22 ordering, or arranging for or recommending purchasing, leasing, or ordering any
- 23 good, facility, service, or item for which public assistance payment may be made in
- 24 whole or in part, is guilty of a Class H felony, except that, notwithstanding the

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1 maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than
2 \$25,000.

3 (b) Whoever offers or provides money, goods, services, or any other thing of
4 value to any person to induce the person to refer an individual to a person for the
5 furnishing or arranging for the furnishing of any item or service for which public
6 assistance payment may be made in whole or in part, or to purchase, lease, order, or
7 arrange for or recommend purchasing, leasing, or ordering any good, facility, service,
8 or item for which public assistance payment may be made in whole or in part, is guilty
9 of a Class H felony, except that, notwithstanding the maximum fine specified in s.
10 939.50 (3) (h), the person may be fined not more than \$25,000.

11 (c) This subsection does not apply to any of the following:

12 1. A discount or other reduction in price obtained by a provider of services or
13 other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed
14 and appropriately reflected in the costs claimed or charges made by the provider or
15 entity under a public assistance program.

16 2. An amount paid by an employer to an employee who has a bona fide
17 employment relationship with the employer for employment in the provision of
18 covered items or services.

19 (6) Whoever makes any statement in a written application for public
20 assistance is considered to have made an admission as to the existence, correctness,
21 or validity of any fact stated. Such a statement is prima facie evidence against the
22 person who made it in any complaint, information, or indictment, or in any action
23 brought for enforcement of any provision of this section or ch. 49.

24 **SECTION 57. Nonstatutory provisions.**

25 (1) PUBLIC ASSISTANCE APPLICATIONS; RULES.

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1 (a) The department of children and families shall present the statement of
2 scope of the rules required under section 49.835 (3) of the statutes, as created by this
3 act, to the governor for the approval under section 227.135 (2) of the statutes no later
4 than the 30th day after the effective date of this paragraph. The department of
5 children and families shall submit in proposed form the rules required under section
6 49.835 (3) of the statutes, as created by this act, to the legislative council staff under
7 section 227.15 (1) of the statutes no later than the first day of the 18th month
8 beginning after the governor approves the statement of scope for the rules.

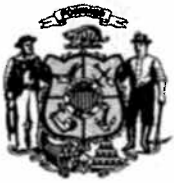
9 (b) The department of health services shall present the statement of scope of
10 the rules required under section 49.835 (3) of the statutes, as created by this act, to
11 the governor for the approval under section 227.135 (2) of the statutes no later than
12 the 30th day after the effective date of this paragraph. The department of health
13 services shall submit in proposed form the rules required under section 49.835 (3) of
14 the statutes, as created by this act, to the legislative council staff under section
15 227.15 (1) of the statutes no later than the first day of the 18th month beginning after
16 the governor approves the statement of scope for the rules.

SECTION 58. Initial applicability.

17
18 (1) PUBLIC ASSISTANCE APPLICATIONS. The treatment of section 49.835 of the
19 statutes first applies to applications for aid or benefits under chapter 49 of the
20 statutes that are received by the department of health services or the department of
21 children and families on the effective date of this subsection.

22 (2) PUBLIC ASSISTANCE FRAUD. The treatment of section 946.93 of the statutes
23 first applies to acts and omissions that occur on the effective date of this subsection.

24 (END)



**SENATE AMENDMENT 1,
TO SENATE BILL 245**

December 5, 2013 – Offered by Senator DARLING.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 16, line 24: delete that line and substitute:

3 **“49.835 Statements in applications. A person who”**.

4 **2.** Page 17, line 5: delete lines 5 to 14.

5 **3.** Page 22, line 24: delete lines 24 and 25.

6 **4.** Page 23, line 1: delete lines 1 to 16.

7 (END)

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