



2013 ASSEMBLY BILL 877

March 18, 2014 - Introduced by Representatives BARNES, GENRICH, A. OTT, MASON, C. TAYLOR, HEBL, POPE, BERCEAU, SINICKI, ZAMARRIPA, BEWLEY and HULSEY, cosponsored by Senators T. CULLEN and HARRIS. Referred to Committee on Public Safety and Homeland Security.

1 **AN ACT to amend** 255.15 (3) (b) (intro.); and **to create** 20.435 (1) (gc), 346.94 (23),
2 346.947, 346.95 (12), 814.75 (28) and 814.79 (11) of the statutes; **relating to:**
3 smoking in motor vehicles while children are present, making an
4 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits, with exceptions, a person from smoking in specified enclosed or outdoor locations, including in a “public conveyance,” which is a mass transit vehicle, school bus, or other device by which persons are transported for hire except in interstate commerce. A person who violates this prohibition is subject to a forfeiture of not less than \$100 nor more than \$250 for each violation.

Also under current law, the Department of Health Services administers a tobacco use control program (program) to award grants for specified purposes, including to reduce tobacco use and promote tobacco use cessation and prevention.

This bill prohibits a person from smoking in a motor vehicle while a person under 16 years of age is present in the motor vehicle, regardless of whether the motor vehicle is on a highway. However, the bill does not apply to smoking in a public conveyance. A person who violates this prohibition must forfeit \$25 for the first offense and \$50 for each subsequent offense and must also pay a surcharge in the same amount. The surcharge proceeds provide additional funding for the program. A law enforcement officer may not stop or inspect a vehicle solely to determine compliance with this smoking prohibition but may issue a citation for a violation observed in the course of a stop or inspection made for other purposes.

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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.** 20.435 (1) (gc) of the statutes is created to read:

2 20.435 (1) (gc) *Tobacco use control, surcharge proceeds.* All moneys received
3 from vehicle smoking surcharges under s. 346.947 for grants and programs under s.
4 255.15 (3).

5 **SECTION 2.** 255.15 (3) (b) (intro.) of the statutes is amended to read:

6 255.15 (3) (b) (intro.) From the appropriation ~~account~~ accounts under s. 20.435
7 (1) (fm) and (gc), the department may award grants for any of the following:

8 **SECTION 3.** 346.94 (23) of the statutes is created to read:

9 346.94 (23) SMOKING IN MOTOR VEHICLES WHILE CHILDREN ARE PRESENT. (a) In this
10 subsection:

11 1. "Public conveyance" has the meaning given in s. 101.123 (1) (e).

12 2. "Smoke" means to burn or hold, or inhale or exhale smoke from, any item
13 described in s. 101.123 (1) (h) 1. to 4. containing tobacco.

14 (b) No person may smoke in a motor vehicle while a person under 16 years of
15 age is present in the motor vehicle, regardless of whether the motor vehicle is on a
16 highway.

17 (c) This subsection does not apply if the motor vehicle is a public conveyance.

18 (d) Notwithstanding s. 349.02, a law enforcement officer may not stop or
19 inspect a vehicle solely to determine compliance with this subsection or a local
20 ordinance in conformity with this subsection. This paragraph does not limit the
21 authority of a law enforcement officer to issue a citation for a violation of this

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1 subsection or a local ordinance in conformity with this subsection observed in the
2 course of a stop or inspection made for other purposes, except that a law enforcement
3 officer may not take a person into physical custody solely for a violation of this
4 subsection or a local ordinance in conformity with this subsection.

5 **SECTION 4.** 346.947 of the statutes is created to read:

6 **346.947 Smoking in vehicle surcharge. (1)** Whenever a court imposes a
7 forfeiture under s. 346.95 (12) for a violation of s. 346.94 (23), the court shall also
8 impose a vehicle smoking surcharge under ch. 814 in an amount equal to the amount
9 of the forfeiture imposed.

10 **(2)** If a forfeiture is suspended in whole or in part, the surcharge under sub.
11 (1) shall be reduced in proportion to the suspension.

12 **(3)** If any deposit is made for an offense to which this section applies, the person
13 making the deposit shall also deposit a sufficient amount to include the surcharge
14 under this section. If the deposit is forfeited, the amount of the surcharge shall be
15 transmitted to the secretary of administration under sub. (4). If the deposit is
16 returned, the amount of the surcharge shall also be returned.

17 **(4)** The clerk of the circuit court shall collect and transmit to the county
18 treasurer the vehicle smoking surcharge as required under s. 59.40 (2) (m). The
19 county treasurer shall then pay the secretary of administration as provided in s.
20 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts received
21 under this subsection in the general fund to be appropriated under s. 20.435 (1) (gc).

22 **SECTION 5.** 346.95 (12) of the statutes is created to read:

23 **346.95 (12)** Any person violating s. 346.94 (23) shall be required to forfeit \$25
24 for the first offense and \$50 for each subsequent offense.

25 **SECTION 6.** 814.75 (28) of the statutes is created to read:

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1 814.75 **(28)** The vehicle smoking surcharge under s. 346.947.

2 **SECTION 7.** 814.79 (11) of the statutes is created to read:

3 814.79 **(11)** The vehicle smoking surcharge under s. 346.947.

4 **SECTION 8. Effective date.**

5 (1) This act takes effect on the first day of the 4th month beginning after
6 publication.

7 **(END)**