

Soon
in 4/2

LRB-1791/P1 P2
ARG:lmk/pg
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Rec'd ✓

1 **AN ACT** to repeal 343.31 (1) (hm) and 343.44 (2) (am); to renumber 343.05 (5)
2 (a); to renumber and amend 343.05 (5) (b) 3. a., 343.05 (5) (b) 3. b., 343.05 (5)
3 (b) 3. c., 343.05 (5) (b) 3. d., 343.44 (2) (a), 343.44 (2) (as), 343.44 (2) (e), 343.44
4 (2) (f), 343.44 (2) (g) and 343.44 (2) (h); to amend 343.05 (5) (b) 1., 343.30 (2j)
5 (a) and 343.44 (2) (b) (intro.); and to create 343.05 (5) (ag), 343.05 (5) (b) 4. c.
6 and d., 343.05 (5) (b) 5. (intro.), a., and b., 343.44 (2) (ad), 343.44 (2) (ag) 2.,
7 343.44 (2) (ag) 3. c. and d., 343.44 (2) (ar) 2., 343.44 (2) (ar) 3. (intro.), a., and
8 b. and 343.44 (2) (br) of the statutes; relating to: operating a motor vehicle
9 without a valid driver's license or after suspension or revocation of an operating
10 privilege and providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from operating a motor vehicle on the highway during any period in which the person's motor vehicle operating privilege is suspended (operating while suspended or OWS) or revoked (operating after revocation or OAR) or, with limited exceptions, if the person does not possess a valid operator's license issued by the Department of Transportation (DOT) that is not revoked, suspended, canceled, or expired (operating without a license or OWL).

Under current law, a person convicted of OWS must forfeit not less than \$50 nor more than \$200. In addition, a person convicted of "knowing" OWS may be required to forfeit not more than \$200. A person convicted of first-offense OAR must forfeit not more than \$2,500 unless the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a knowing OWS violation or OAR violation, causes: (a) damage to the property of another must forfeit \$1,000; (b) injury to another person must forfeit \$5,000; or (c) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: (a) damage to the property of another, the person must forfeit \$1,000; (b) injury to another person, the person must forfeit \$5,000; or (c) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill provides that a person convicted of first-offense OAR must forfeit not more than \$2,500 regardless of the underlying reason for the revocation, and also provides that violation of a local OAR ordinance may be counted for purposes of determining whether a person has any prior OAR conviction. The bill also ~~increases the penalty for a knowing OWS violation to a forfeiture of not less than \$100 nor more than \$400.~~ The bill also revises the penalties for OWS, OAR, and OWL violations where the person, in the course of the violation, causes damage to the property of another, injury to another person, or great bodily harm or death to another person.

Under the bill, a person convicted of OWS ~~or knowing OWS~~ who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must forfeit not less than \$200 nor more than \$1,000; (b) injury to another person but not death or great bodily harm must forfeit not less than ~~\$1,000~~ \$500 nor more than \$5,000; (c) great bodily harm to another person must forfeit not less than \$5,000 nor more than \$7,500; or (d) the death of another person must forfeit not less than \$7,500 nor more than \$10,000.

insert
ANAL-A

repeals
as
a separate
and distinct

- #200
- Under the bill, a person convicted of OAR who, in the course of the violation, causes:
- > (a) damage to the property of another but not death or injury to another person must be fined not less than ~~\$1,000~~ nor more than \$2,500 or imprisoned for not more than one year in the county jail or both;
 - > (b) injury to another person but not death or great bodily harm must be fined not less than ~~\$2,500~~ nor more than \$5,000 or imprisoned for not more than one year in the county jail or both;
 - > (c) great bodily harm to another person is guilty of a Class I felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both;
 - > or (d) the death of another person is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both.
- #500
- keep

Under the bill, with limited exceptions, a person who is convicted for an OWL violation knowing that he or she does not possess a valid operator's license and who, in the course of the OWL violation, causes:

- > (a) damage to the property of another but not death or injury to another person must forfeit not less than \$200 nor more than \$1,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than \$200 nor more than \$1,000 or imprisoned for not more than 90 days in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years;
- > (b) injury to another person but not death or great bodily harm must forfeit not less than ~~\$1,000~~ nor more than \$5,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than ~~\$1,000~~ nor more than \$5,000 or imprisoned for not more than nine months in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years;
- > (c) great bodily harm to another person must forfeit not less than \$5,000 nor more than \$7,500 if the person has not been convicted of a previous OWL violation within the preceding three years and is guilty of a Class A misdemeanor if the person has been convicted of a previous OWL violation within the preceding three years; or
- > (d) the death of another person must forfeit not less than \$7,500 nor more than \$10,000 if the person has not been convicted of a previous OWL violation within the preceding three years and is guilty of a Class I felony if the person has been convicted of a previous OWL violation within the preceding three years.

(us2)

#500

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period. In addition, DOT must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period.

insert ANAL-B
insert ANAL-C

This bill ^{and} eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD, but does not alter any provision relating to court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD.

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five-year period. The revocation is for six months.

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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. 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2 SECTION 2. 343.05 (5) (ag) of the statutes is created to read:

3 343.05 (5) (ag) In this subsection, "great bodily harm" has the meaning given
4 in s. 939.22 (14).

***NOTE: I have inserted a definition of great bodily harm that is consistent with the definition used in ch. 346. I have inserted an identical provision in created s. 343.44 (2) (ad). I have chosen to create "narrow" definitions, applicable only to the particular provisions here, rather than creating a definition in s. 343.01 for all of ch. 343. While it would be easier to create a definition in s. 343.01, it would impact a number of other provisions in ch. 343. Most of these provisions are already tied to the same definition of "great bodily harm" appearing in s. 939.22 (14), but not all of them. I would be happy to move these two definitions of "great bodily harm" in the bill into s. 343.01 if there are no objections to doing so.

5 SECTION 3. 343.05 (5) (b) 1. of the statutes is amended to read:

1 343.05 (5) (b) 1. Except as provided in ~~subd. subds. 2. or 3., 4., and 5.~~ and sub.
2 (6), any person who violates sub. (3) (a) may be required to forfeit not more than \$200
3 for the first offense, may be fined not more than \$300 and imprisoned for not more
4 than 30 days for the 2nd offense occurring within 3 years, and may be fined not more
5 than \$500 and imprisoned for not more than 6 months for the 3rd or subsequent
6 offense occurring within 3 years. A In this paragraph, a violation of a local ordinance
7 in conformity with this section or a violation of a law of a federally recognized
8 American Indian tribe or band in this state in conformity with this section shall count
9 as a previous offense.

10 **SECTION 4.** 343.05 (5) (b) 3. a. of the statutes is renumbered 343.05 (5) (b) 4.
11 (intro.) and amended to read:

12 343.05 (5) (b) 4. (intro.) Any Except as provided in subd. 2. and sub. (6), any
13 person who violates sub. (3) (a) knowing that he or she does not possess a valid
14 operator's license, who has not been convicted of a previous violation of sub. (3) (a)
15 within the preceding 3-year period, and who, in the course of operating a motor
16 vehicle which is not a commercial motor vehicle upon a highway in this state
17 knowingly without a valid operator's license issued to the person by the department
18 or knowingly with an operator's license that has been revoked, suspended, or
19 canceled, violating sub. (3) (a), causes damage to the property of another, injury or
20 great bodily harm to another person, or the death of another person, shall be
21 required;

22 a. Required to forfeit not less than \$200 nor more than \$1,000 if the person
23 causes damage to the property of another but does not cause death or injury to
24 another person.

1 **SECTION 5.** 343.05 (5) (b) 3. b. of the statutes is renumbered 343.05 (5) (b) 4. b.
2 and amended to read:

3 343.05 (5) (b) 4. b. ~~Any person who, in the course of operating a motor vehicle~~
4 ~~which is not a commercial motor vehicle upon a highway in this state knowingly~~
5 ~~without a valid operator's license issued to the person by the department or~~
6 ~~knowingly with an operator's license that has been revoked, suspended, or canceled,~~
7 ~~causes injury to another person shall be required~~ Required to forfeit not less than
8 \$1,000 ~~nor more than \$5,000 if the person causes injury to another person but the~~
9 other person does not suffer great bodily harm or death.

****NOTE: With regard to the cross-references to subd. 2. and sub. (6): under sub. (6) driving with a suspended or revoked license must be dealt with under s. 343.44; under subd. 2., a person operating with a license expired for 3 months or less is only subject to a \$100 forfeiture if it is a first offense. I consider existing s. 343.05 (3) (a) and s. 343.05 (5) (b) 3. a. created under Act 412 to be very confusing because a suspended, revoked, canceled, or expired operator's license is not a valid operator's license for purposes of operating a vehicle, so the provision is entirely redundant, in my view. I have therefore made some modifications to the Act 412 language.

10 **SECTION 6.** 343.05 (5) (b) 3. c. of the statutes is renumbered 343.05 (5) (b) 5. c.
11 and amended to read:

12 343.05 (5) (b) 5. c. ~~Any person who, in the course of operating a motor vehicle~~
13 ~~which is not a commercial motor vehicle upon a highway in this state knowingly~~
14 ~~without a valid operator's license issued to the person by the department or~~
15 ~~knowingly with an operator's license that has been revoked, suspended, or canceled,~~
16 ~~causes great bodily harm to another person is guilty~~ Guilty of a Class A misdemeanor
17 if the person causes great bodily harm to another person.

18 **SECTION 7.** 343.05 (5) (b) 3. d. of the statutes is renumbered 343.05 (5) (b) 5. d.
19 and amended to read:

20 343.05 (5) (b) 5. d. ~~Any person who, in the course of operating a motor vehicle~~
21 ~~which is not a commercial motor vehicle upon a highway in this state knowingly~~

1 ~~without a valid operator's license issued to the person by the department or~~
2 ~~knowingly with an operator's license that has been revoked, suspended, or canceled,~~
3 ~~causes the death of another person is guilty~~ Guilty of a Class A misdemeanor I felony
4 if the person causes the death of another person.

****NOTE: I have chosen the penalties in s. 343.05 (5) (b) 5. c. and d. in part to loosely correlate to the potential penalties under current law, including those created by 2005 Act 412, and also based in part upon proposed penalties contained in 2007 LRB-0408/P1.

5 **SECTION 8.** 343.05 (5) (b) 4. c. and d. of the statutes are created to read:

6 343.05 (5) (b) 4. c. Required to forfeit not less than \$5,000 nor more than \$7,500
7 if the person causes great bodily harm to another person.

8 d. Required to forfeit not less than \$7,500 nor more than \$10,000 if the person
9 causes the death of another person.

****NOTE: The forfeiture amounts I have included for created s. 343.05 (5) (b) 4. c. and d. are, in part, intended to correlate to some extent to the existing penalty for a violation of s. 343.05 (3) (a) and to the monetary part of the penalties created by 2005 Act 412 for violating s. 343.05 (3) (a).

10 **SECTION 9.** 343.05 (5) (b) 5. (intro.), a., and b. of the statutes are created to read:

11 343.05 (5) (b) 5. (intro.) Except as provided in subd. 2. and sub. (6), any person
12 who violates sub. (3) (a) knowing that he or she does not possess a valid operator's
13 license, who has been convicted of a previous violation of sub. (3) (a) within the
14 preceding 3-year period, and who, in the course of violating sub. (3) (a), causes
15 damage to the property of another, injury or great bodily harm to another person, or
16 the death of another person, shall be:

17 a. Fined not less than \$200 nor more than \$1,000 or imprisoned for not more
18 than 90 days in the county jail or both if the person causes damage to the property
19 of another but does not cause death or injury to another person.

① b. Fined not less than ^{\$500}~~\$1,000~~ nor more than \$5,000 or imprisoned for not more
 2 than 9 months in the county jail or both if the person causes injury to another person
 3 but the other person does not suffer great bodily harm or death.

****NOTE: I have chosen the amounts in created s. 343.05 (5) (b) 5. a. and b. in part to loosely correlate to the potential penalties under current law, including those created by 2005 Act 412.

④ **SECTION 10.** 343.30 (2j) (a) of the statutes is amended to read:

⑤ 343.30 (2j) (a) A court may ~~revoke~~ suspend a person's operating privilege upon
 ⑥ the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall ~~revoke~~
 ⑦ suspend a person's operating privilege upon the person's 2nd or subsequent
 ⑧ conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The
 ⑨ ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining
 ⑩ prior convictions for purposes of this paragraph, the 5-year period shall be measured
 ⑪ from the dates of the violations that resulted in the convictions. Each conviction
 ⑫ under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s.
 ⑬ 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be
 ⑭ counted as a single conviction.

⑮ **SECTION 11.** 343.31 (1) (hm) of the statutes is repealed.

⑯ **SECTION 12.** 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and
 ⑰ amended to read:

⑱ 343.44 (2) (ag) 1. Any Except as provided in subds. 2. and 3., any person who
 ⑲ violates sub. (1) (a) ~~or a local ordinance in conformity therewith~~ shall be required to
 ⑳ forfeit not less than \$50 nor more than \$200.

****NOTE: I believe this ordinance language is unnecessary and misleading, so I have stricken it.

㉑ **SECTION 13.** 343.44 (2) (ad) of the statutes is created to read:

㉒ 343.44 (2) (ad) "Great bodily harm" has the meaning given in s. 939.22 (14).

insert s-4

insert s-15

1
2
3

4
5
6
7
8

9
10
11
12
13
14
15
16
17

SECTION 14. 343.44 (2) (ag) 2. of the statutes is created to read:

343.44 (2) (ag) 2. Except as provided in subd. 3., any person who violates sub. (1) (am) shall be required to forfeit not less than \$100 nor more than \$400.

****NOTE: The issue of a penalty for violating s. 343.44 (1) (am) was discussed in the "/P1" drafter's note but not at the meeting on January 31. I believe that s. 343.44 (1) (am) should be repealed or a specific penalty for its violation created. I have included a treatment, using an arbitrary penalty amount, for purposes of facilitating discussion on this issue. However, perhaps repeal of the provision would be a preferable approach. For purposes of the "enhancements" under subd. 3., I have treated sub. (1) (a) and (am) identically.

SECTION 15. 343.44 (2) (ag) ^z3. c. and d. of the statutes are created to read:

343.44 (2) (ag) ^z3. c. Required to forfeit not less than \$5,000 nor more than \$7,500 if the person causes great bodily harm to another person.

d. Required to forfeit not less than \$7,500 nor more than \$10,000 if the person causes the death of another person.

****NOTE: The forfeiture amounts I have included for created s. 343.44 (2) (ag) 3. c. and d. are, in part, intended to correlate to some extent to the existing penalty for a violation of s. 343.44 (1) (a) and to the monetary part of the penalties created by 2005 Act 412 for violating s. 343.44 (1) (am).

****NOTE: I have expanded what was s. 343.44 (2) (e) to (g) to cover both violations of sub. (1) (a) and (am). Is this consistent with your intent?

Insert 9-8 →

SECTION 16. 343.44 (2) (am) of the statutes is repealed.

SECTION 17. 343.44 (2) (ar) 2. of the statutes is created to read:

343.44 (2) (ar) 2. Except as provided in subd. 3., any person who violates sub. (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one year in the county jail or both if the person has been convicted of a previous violation of sub. (1) (b), or of a local ordinance in conformity with sub. (1) (b), within the preceding 5-year period.

SECTION 18. 343.44 (2) (ar) 3. (intro.), a., and b. of the statutes are created to read:

1 343.44 (2) (ar) 3. (intro.) Any person who violates sub. (1) (b) and, in the course
2 of the violation, causes damage to the property of another, injury or great bodily harm
3 to another person, or the death of another person, shall be:

4 a. Fined not less than ~~\$1,000~~^{\$200} nor more than \$2,500 or imprisoned for not more
5 than one year in the county jail or both if the person causes damage to the property
6 of another but does not cause death or injury to another person.

7 b. Fined not less than ~~\$2,500~~^{\$500} nor more than \$5,000 or imprisoned for not more
8 than one year in the county jail or both if the person causes injury to another person
9 but the other person does not suffer great bodily harm or death.

***NOTE: I have chosen the penalties in s. 343.44 (2) (ar) 3. a. and b. in part to
loosely correlate to the potential penalties under current law, including those created by
2005 Act 412.

10 **SECTION 19.** 343.44 (2) (as) of the statutes is renumbered 343.44 (2) (ar) 1. and
11 amended to read:

12 343.44 (2) (ar) 1. Any Except as provided in subds. 2. and 3., any person who
13 violates sub. (1) (b) after July 27, 2005, shall forfeit not more than \$2,500, except that,
14 if the person has been convicted of a previous violation of sub. (1) (b) within the
15 preceding 5-year period or if the revocation identified under sub. (1) (b) resulted from
16 an offense that may be counted under s. 343.307 (2), the penalty under par. (b) shall
17 apply.

18 **SECTION 20.** 343.44 (2) (b) (intro.) of the statutes is amended to read:

19 343.44 (2) (b) (intro.) ~~Except as provided in pars. (am) and (as), any person who~~
20 ~~violates sub. (1) (b) or (d) shall be fined not more than \$2,500 or imprisoned for not~~
21 ~~more than one year in the county jail or both. In imposing a sentence under this~~
22 ~~paragraph, or a local ordinance in conformity with this paragraph, par. (ar) 2. or 3.~~
23 or (br), the court shall review the record and consider the following:

1 SECTION 21. 343.44 (2) (br) of the statutes is created to read:

2 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than
3 \$2,500 or imprisoned for not more than one year in the county jail or both.

****NOTE: This provision, relating to operating while disqualified, is identical to current law. I have simply moved the language out of s. 343.44 (2) (b) (intro.) into a new paragraph.

4 SECTION 22. 343.44 (2) (e) of the statutes is renumbered 343.44 (2) (ag) ² 3.
5 (intro.) and amended to read:

6 343.44 (2) (ag) ² 3. (intro.) [↓] Any person who violates sub. (1) (a) or (am) and, in
7 the course of a- the violation of sub. (1) (am) or (b) or a local ordinance in conformity
8 therewith, causes damage to the property of another, injury or great bodily harm to
9 another person, or the death of another person, shall be required:

10 a. Required to forfeit not less than \$200 nor more than \$1,000 if the person
11 causes damage to the property of another but does not cause death or injury to
12 another person.

****NOTE: I have taken out the reference to local ordinance that is made in s. 343.44 (2) (e), as I believe it is not appropriate.

13 SECTION 23. 343.44 (2) (f) of the statutes is renumbered 343.44 (2) (ag) ³ 3. b. and
14 amended to read:

15 343.44 (2) (ag) ² 3. b. Any person who, in the course of a violation of sub. (1) (am)
16 or (b) or a local ordinance in conformity therewith, causes injury to another person
17 shall be required Required to forfeit not less than ^{#500} ~~\$1,000~~ nor more than \$5,000 if the
18 person causes injury to another person but the other person does not suffer great
19 bodily harm or death.

20 SECTION 24. 343.44 (2) (g) of the statutes is renumbered 343.44 (2) (ar) 3. c. and
21 amended to read:

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1791/P2ins
ARG:.....

INSERT ANAL-A:

(no P) However, if the person has a prior OWS conviction in the preceding five-year period and knows that his or her operating privilege has been suspended, the person is: (a) guilty of a Class I felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both, if he or she causes great bodily harm to another person; or (b) guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both, if he or she causes the death of another person. ✓

INSERT ANAL-B:

This bill makes court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD permissive rather than mandatory. ✓
De

INSERT ANAL-C:

(no P) In addition, the bill requires a court to revoke a person's operating privilege if the person is convicted of OWS and, in the course of the violation, the person causes great bodily harm or death to another person. ✓ The bill allows a court to revoke a person's operating privilege if the person is convicted of OWS and, in the course of the violation, the person causes injury to another person. ✓

INSERT 8-4:

SECTION ~~1~~ 343.30 (1g) of the statutes is amended to read: ✓

343.30 (1g) (a) ~~Except as provided in par.~~ Subject to pars. (b) to (d), a court may suspend a person's operating privilege for any period not exceeding 6 months upon ~~the~~ the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in conformity therewith. ✓

(b) ~~A~~ Except as provided in pars. (d), a court shall ~~may~~ revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in conformity therewith if the person has been convicted of

3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the 5-year period preceding the violation. The

(e) Any revocation under this subsection shall be for a period of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 46, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; 2001 a. 15, 16, 38; 2003 a. 30, 80; 2005 a. 277, 2005 a. 443 s. 265; 2005 a. 466.

~~SECTION 2.~~ 343.30 (1g) (c) and (d) of the statutes are created to read:

343.30 (1g) (c) A court may revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a) or a local ordinance in conformity therewith if the person, in the course of the violation, causes injury to another person but the other person does not suffer great bodily harm or death. ✓

(d) A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a) or a local ordinance in conformity therewith if the person, in the course of the violation, causes great bodily harm, as defined in s. 939.22 (14), to another person or the death of another person.

INSERT 8-15: ✗

~~SECTION 3.~~ 343.44 (1) (am) of the statutes is repealed.

INSERT 9-8: ✓

~~SECTION 4.~~ 343.44 (2) (ag) 3. of the statutes is created to read:

343.44 (2) (ag) 3. Any person who violates sub. (1) (a) knowing that his or her operating privilege has been suspended, who has been convicted of a previous violation of sub. (1) (a), or of a local ordinance in conformity with sub. (1) (a), within

the preceding 5-year period, and who, in the course of violating sub. (1) (a), causes great bodily harm to another person or the death of another person, shall be:

a. Guilty of a Class I felony if the person causes great bodily harm to another person. ✓

b. Guilty of a Class H felony if the person causes the death of another person. ✓

****NOTE: The term "knowing" is used in this provision in a manner consistent with the discussion at the meeting on March 27. This is not necessarily the same manner in which "knowingly" is used in s. 343.44 (1) (am). ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1791/P3dn
ARG:lmk:nwn

June 1, 2007

ATTN: Christian Moran

Please review the attached draft carefully to ensure that it is consistent with your intent.

There was some discussion at our May 2 meeting of the meaning of "cause" in this draft. As discussed, the term "cause" is derived from current law and, while it may be quite strict for the defendant, I believe it is relatively unambiguous. The bill provides for enhanced penalties if, in the course of a violation, the defendant causes damage or injury. I believe the provisions of the bill require the court or jury to determine whether there was a violation and then determine whether, at the time of the violation, any property was damaged or any person injured. I believe the court or jury must then determine whether, among the causes of damage or injury, the defendant was one of them; that is, whether *any* of the cause is attributable to the defendant. Presumably this issue will arise when there is a traffic accident involving a driver who is, for example, operating while suspended (OWS). In contrast to the standards for civil liability, I believe that the bill provides for a penalty enhancement imposed on the OWS driver if he or she bears *any* percentage of fault for the damage or injury in the accident, but that he or she must bear more than 0% of the fault. As for the "rear-end" scenario discussed at our meeting, I believe it would be a question for the court or jury whether the rear-ended driver bore any fault for the accident and resulting damage or injury to the rear-ending driver.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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

128 N

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

5/2 Meets in Kruisid etc.

- d- note : cause

1st offense death
OWS, OWL, OAR
- felony
knowledge

Class # ?

any % of fault, but for accident where someone is injured or killed

more than 0%

caused means

Preliminary OAR Draft (LRB-1791/P2) for Discussion Purposes

Offense	Act 412 K-OWS*, OWL & OAR	LRB-1791/P2			OAR
		OWS or OWL(1st)	OWS (2 or more in 5 yrs)	OWL (2 or more in 3 yrs)	
Damage	\$1,000	\$200-\$1,000	\$200-\$1,000	\$200-\$1,000/90 days max	\$200-\$2,500/1 yr max
Injury	\$5,000	\$500-\$5,000 permissive revoke(if OWS)	\$500-\$5,000 permissive revoke	\$500-\$5,000/ 9 mos max	\$500-\$5,000/1 yr max
Great Bodily Harm	\$10,000 max and/or 9 mos max	\$5,000-\$7,500 mandatory revoke (if OWS)	\$10,000 max/3.5 yrs max mandatory revoke	\$10,000 max/9 mos max	\$10,000 max/3.5 yrs max
Death	\$10,000 max and/or 9 mos max	\$7,500-\$10,000 mandatory revoke (if OWS)	\$10,000 max/6 yrs max mandatory revoke	\$10,000 max/3.5 yrs max	\$10,000 max/6 yrs max

*K-OWS = "Knowing Operating While Suspended". LRB-1791/P2 eliminates "Knowing" OWS as a separate and distinct violation, because p-draft 1 treated them the same.

DOT Provisions

Offense	Current Law	LRB-1791/P2
4 th OAR, OWS or OWD w/in 5 yrs	Automatic court ordered revoke and DOT admin revocation.	Makes court ordered revoke permissive and removes DOT admin revocation.
Illegal railroad crossing	Permissive revoke for 1 st offense. Mandatory revoke for 2+ offenses.	Suspension for all offenses.
1st OAR	\$2,500 forfeiture max	\$2,500 max forfeiture (local ordinance convictions counted-see below)
1st OAR(alcohol or drug traffic violation)	\$2,500 max fine/1 yr max	\$2,500 max fine/1 yr max (local ordinance convictions counted)
2+ OAR	\$2,500 max fine/1 yr max (local ordinance convictions not counted)	\$2,500 max fine/1 yr max (local ordinance convictions counted)
"Knowing" OWS	\$200 max	"Knowing" OWS eliminated as a separate and distinct violation.

Offense	Act 412 K-OWS*, OWL & OAR	OWS or OWL (1st)	LRR-1791/P2	
			OWS (2 or more in 5 yrs)	OWL (2 or more in 3 yrs)
Damage	\$1,000	✓ \$200-\$1,000	\$200-\$1,000	✓ \$200-\$1,000 and/or 90 days max
Injury	\$5,000	\$500-\$5,000 & permissive license revoke OWS	\$500-\$5,000 1	\$500-\$5,000 and/or 9 mos max
Great Bodily Harm	\$10,000 max and/or 9 mos max	\$5,000-\$7,500 & mandatory license revoke OWS	\$10,000 max and/or 3.5 yrs max 1	\$10,000 max and/or 9 mos max
Death	\$10,000 max and/or 9 mos max	\$7,500-\$10,000 & mandatory license revoke OWS	\$10,000 max and/or 6 yrs max 1	\$10,000 max and/or 3.5 yrs max

*K-OWS = "Knowing Operating While Suspended". LRR-1791/P2 eliminates "knowing" OWS as a separate and distinct violation.

OAR

\$200-\$2,500 and/or 1 yr max

\$500-\$5,000 and/or 1 yr max

\$10,000 max and/or 3.5 yrs
max

\$10,000 max and/or 6 yrs max

He w/ Christa

5/24

- OAK

1791/P2

6-1733

/83

OWS/DWL - 2nd court

1st office OWS/DWL
H felony

Gary, Aaron

From: Gary, Aaron
Sent: Friday, May 25, 2007 12:11 PM
To: Moran, Christian
Subject: RE: LRB-1791

Hi Christian,

I hope you had a good weekend. (I returned your call of yesterday but was told you had started your weekend!) On the OAR draft, I was kind of waiting to see what the final verdict would be re my e-mail below.

Before this thing gets too stale, I'll just redraft as a "/P3" to incorporate the changes discussed at our last meeting. I'll probably be able to get to it on Tuesday. If any further changes are made, it's not a problem to make those changes, or to turn it into a "/1" if it looks OK.

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Wednesday, May 02, 2007 4:20 PM
To: Moran, Christian
Subject: LRB-1791

Hi Christian,

Should I go ahead and redraft LRB-1791 as a "/P3", or were you waiting to hear back from Nancy and Karen about the changes discussed today?

By the way, what I was trying to convey in the last minute of our meeting re 1st offense OWS or OWL that causes death is that, while part of this process has included an effort to incorporate an incremental stepping up of penalties based on the offense, with the change that I was directed to make on this particular issue, if the victim almost dies but doesn't, it is a civil violation, but if the victim does die, it is a felony - this is quite a leap with not even a misdemeanor in the middle.

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

05/25/2007



State of Wisconsin
2007 - 2008 LEGISLATURE

5002

LRB-1791 P3

ARG:lmk:pg

in 5/29

shys (AMR)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

Reisen ✓

1 AN ACT *to repeal* 343.31 (1) (hm), 343.44 (1) (am) and 343.44 (2) (am); *to*
2 *renumber* 343.05 (5) (a); *to renumber and amend* 343.05 (5) (b) 3. a., 343.05
3 (5) (b) 3. b., 343.05 (5) (b) 3. c., 343.05 (5) (b) 3. d., 343.44 (2) (a), 343.44 (2) (as),
4 343.44 (2) (e), 343.44 (2) (f), 343.44 (2) (g) and 343.44 (2) (h); *to amend* 343.05
5 (5) (b) 1., 343.30 (1g), 343.30 (2j) (a) and 343.44 (2) (b) (intro.); and *to create*
6 343.05 (5) (ag), 343.05 (5) (b) 4. c. and d., 343.05 (5) (b) 5. (intro.), a., and b.,
7 343.30 (1g) (c) and (d), 343.44 (2) (ad), 343.44 (2) (ag) 2. c. and d., 343.44 (2) (ag)
8 3., 343.44 (2) (ar) 2., 343.44 (2) (ar) 3. (intro.), a., and b. and 343.44 (2) (br) of
9 the statutes; **relating to:** operating a motor vehicle without a valid driver's
10 license or after suspension or revocation of an operating privilege and providing
11 penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from operating a motor vehicle on the highway during any period in which the person's motor vehicle operating privilege is suspended (operating while suspended or OWS) or revoked (operating after revocation or OAR) or, with limited exceptions, if the person does not possess a valid

operator's license issued by the Department of Transportation (DOT) that is not revoked, suspended, canceled, or expired (operating without a license or OWL).

Under current law, a person convicted of OWS must forfeit not less than \$50 nor more than \$200. In addition, a person convicted of "knowing" OWS may be required to forfeit not more than \$200. A person convicted of first-offense OAR must forfeit not more than \$2,500 unless the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a "knowing" OWS violation or OAR violation, causes: (a) damage to the property of another must forfeit \$1,000; (b) injury to another person must forfeit \$5,000; or (c) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: (a) damage to the property of another, the person must forfeit \$1,000; (b) injury to another person, the person must forfeit \$5,000; or (c) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill provides that a person convicted of first-offense OAR must forfeit not more than \$2,500 regardless of the underlying reason for the revocation, and also provides that violation of a local OAR ordinance may be counted for purposes of determining whether a person has any prior OAR conviction. The bill also repeals "knowing" OWS as a separate and distinct violation. The bill also revises the penalties for OWS, OAR, and OWL violations where the person, in the course of the violation, causes damage to the property of another, injury to another person, or great bodily harm or death to another person.

Under the bill, a person convicted of OWS who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must forfeit not less than \$200 nor more than \$1,000; (b) injury to another person but not death or great bodily harm must forfeit not less than \$500 nor more than \$5,000; (c) great bodily harm to another person must forfeit not less than \$5,000

Insert
ANAL

nor more than \$7,500; or (d) the death of another person must forfeit not less than \$7,500 nor more than \$10,000. However, if the person has a prior OWS conviction in the preceding five-year period and knows that his or her operating privilege has been suspended, the person is: (a) guilty of a Class I felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both, if he or she causes great bodily harm to another person; or (b) guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both, if he or she causes the death of another person.

Under the bill, a person convicted of OAR who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must be fined not less than \$200 nor more than \$2,500 or imprisoned for not more than one year in the county jail or both; (b) injury to another person but not death or great bodily harm must be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both; (c) great bodily harm to another person is guilty of a Class I felony; or (d) the death of another person is guilty of a Class H felony.

Under the bill, with limited exceptions, a person who is convicted for an OWL violation knowing that he or she does not possess a valid operator's license and who, in the course of the OWL violation, causes: (a) damage to the property of another but not death or injury to another person must forfeit not less than \$200 nor more than \$1,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than \$200 nor more than \$1,000 or imprisoned for not more than 90 days in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years; (b) injury to another person but not death or great bodily harm must forfeit not less than \$500 nor more than \$5,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than nine months in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years; (c) great bodily harm to another person must forfeit not less than \$5,000 nor more than \$7,500 if the person has not been convicted of a previous

felony
->
->
->
->
->
->
->

OWL violation within the preceding three years and is guilty of a Class A misdemeanor if the person has been convicted of a previous OWL violation within the preceding three years; or (d) the death of another person must forfeit not less than \$7,500 nor more than \$10,000 if the person has not been convicted of a previous OWL violation within the preceding three years and is guilty of a Class I felony if the person has been convicted of a previous OWL violation within the preceding three years. ~~keep~~

I
H

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period. In

addition, DOT must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period.

This bill makes court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD permissive rather than mandatory and eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD. In addition, the bill requires a court to revoke a person's operating privilege if the person is convicted of OWS and, in the course of the violation, the person causes great bodily harm or death to another person. The bill allows a court to revoke a person's operating privilege if the person is convicted of OWS and, in the course of the violation, the person causes injury to another person.

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five-year period. The revocation is for six months.

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2 **SECTION 2.** 343.05 (5) (ag) of the statutes is created to read:

3 343.05 (5) (ag) In this subsection, "great bodily harm" has the meaning given
4 in s. 939.22 (14).

5 **SECTION 3.** 343.05 (5) (b) 1. of the statutes is amended to read:

1 343.05 (5) (b) 1. Except as provided in subd. ~~subds. 2. or 3. 4. and 5.~~ ^{to 6.} and sub.
2 (6), any person who violates sub. (3) (a) may be required to forfeit not more than \$200
3 for the first offense, may be fined not more than \$300 and imprisoned for not more
4 than 30 days for the 2nd offense occurring within 3 years, and may be fined not more
5 than \$500 and imprisoned for not more than 6 months for the 3rd or subsequent
6 offense occurring within 3 years. A In this paragraph, a violation of a local ordinance
7 in conformity with this section or a violation of a law of a federally recognized
8 American Indian tribe or band in this state in conformity with this section shall count
9 as a previous offense.

10 SECTION 4. 343.05 (5) (b) 3. a. of the statutes is renumbered 343.05 (5) (b) 4.
11 (intro.) and amended to read:

12 343.05 (5) (b) 4. (intro.) Any Except as provided in subd. 2. and sub. (6), any
13 person who violates sub. (3) (a) knowing that he or she does not possess a valid
14 operator's license, who has not been convicted of a previous violation of sub. (3) (a)
15 within the preceding 3-year period, and who, in the course of operating a motor
16 vehicle which is not a commercial motor vehicle upon a highway in this state
17 knowingly without a valid operator's license issued to the person by the department
18 or knowingly with an operator's license that has been revoked, suspended, or
19 canceled, violating sub. (3) (a), causes damage to the property of another, ^{or} injury or
20 great bodily harm to another person, ~~or the death of another person,~~ shall be
21 required: ✓

22 a. Required to forfeit not less than \$200 nor more than \$1,000 if the person
23 causes damage to the property of another but does not cause ~~death or~~ injury to
24 another person.

1 SECTION 5. 343.05 (5) (b) 3. b. of the statutes is renumbered 343.05 (5) (b) 4. b.
2 and amended to read:

3 343.05 (5) (b) 4. b. ~~Any person who, in the course of operating a motor vehicle~~
4 ~~which is not a commercial motor vehicle upon a highway in this state knowingly~~
5 ~~without a valid operator's license issued to the person by the department or~~
6 ~~knowingly with an operator's license that has been revoked, suspended, or canceled,~~
7 ~~causes injury to another person shall be required~~ Required to forfeit not less than
8 \$500 nor more than \$5,000 if the person causes injury to another person but the other
9 person does not suffer great bodily harm ~~or death~~.

10 SECTION 6. 343.05 (5) (b) 3. c. of the statutes is renumbered 343.05 (5) (b) 5. c.
11 and amended to read:

12 343.05 (5) (b) 5. c. ~~Any person who, in the course of operating a motor vehicle~~
13 ~~which is not a commercial motor vehicle upon a highway in this state knowingly~~
14 ~~without a valid operator's license issued to the person by the department or~~
15 ~~knowingly with an operator's license that has been revoked, suspended, or canceled,~~
16 ~~causes great bodily harm to another person is guilty~~ Guilty of a Class A ^{strike} ~~misdemeanor~~
17 if the person causes great bodily harm to another person. _{I felony}

18 SECTION 7. 343.05 (5) (b) 3. d. of the statutes is renumbered 343.05 (5) (b) ~~5. d.~~
19 and amended to read:

Present
6-19 →

20 343.05 (5) (b) 5. d. ~~Any person who, in the course of operating a motor vehicle~~
21 ~~which is not a commercial motor vehicle upon a highway in this state knowingly~~
22 ~~without a valid operator's license issued to the person by the department or~~
23 ~~knowingly with an operator's license that has been revoked, suspended, or canceled,~~
24 ~~causes the death of another person is guilty~~ Guilty of a Class A misdemeanor I felony
25 if the person causes the death of another person.

1 SECTION 8. 343.05 (5) (b) 4. c. ~~and d.~~ ^{is} of the statutes ~~are~~ created to read:

2 343.05 (5) (b) 4. c. Required to forfeit not less than \$5,000 nor more than \$7,500
3 if the person causes great bodily harm to another person.

4 ~~d. Required to forfeit not less than \$7,500 nor more than \$10,000 if the person~~
5 ~~causes the death of another person.~~

6 SECTION 9. 343.05 (5) (b) 5. (intro.), a. ⁵ and b. of the statutes are created to read:

7 343.05 (5) (b) 5. (intro.) Except as provided in subd. ^{5 and 6.} 2 and sub. (6), any person
8 who violates sub. (3) (a) knowing that he or she does not possess a valid operator's
9 license, who has been convicted of a previous violation of sub. (3) (a) within the
10 preceding 3-year period, and who, in the course of violating sub. (3) (a), causes
11 damage to the property of another, ^{or} injury or great bodily harm to another person, ~~or~~
12 ~~the death of another person,~~ shall be:

13 a. Fined not less than \$200 nor more than \$1,000 or imprisoned for not more
14 than 90 days in the county jail or both if the person causes damage to the property
15 of another but does not cause ~~death or~~ injury to another person.

16 b. Fined not less than \$500 nor more than \$5,000 or imprisoned for not more
17 than 9 months in the county jail or both if the person causes injury to another person
18 but the other person does not suffer great bodily harm ~~or death.~~

19 SECTION 10. 343.30 (1g) of the statutes is amended to read:

20 343.30 (1g) (a) ~~Except as provided in par.~~ Subject to pars. (b) to (d), a court may
21 suspend a person's operating privilege for any period not exceeding 6 months upon
22 the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance
23 in conformity therewith.

24 (b) ~~-A- Except as provided in pars.~~ ⁵ (d), a court shall may revoke a person's
25 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or

1 (d) or a local ordinance in conformity therewith if the person has been convicted of
2 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under
3 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the
4 5-year period preceding the violation. The

5 (e) Any revocation under this subsection shall be for a period of 6 months,
6 unless the court orders a period of revocation of less than 6 months and places its
7 reasons for ordering the lesser period of revocation on the record.

8 **SECTION 11.** 343.30 (1g) (c) and (d) of the statutes are created to read:

9 343.30 (1g) (c) A court may revoke a person's operating privilege upon the
10 person's conviction for violating s. 343.44 (1) (a) or a local ordinance in conformity
11 therewith if the person, in the course of the violation, causes injury to another person
12 but the other person does not suffer great bodily harm or death.

13 (d) A court shall revoke a person's operating privilege upon the person's
14 conviction for violating s. 343.44 (1) (a) or a local ordinance in conformity therewith
15 if the person, in the course of the violation, causes great bodily harm, as defined in
16 s. 939.22 (14), to another person or the death of another person.

17 **SECTION 12.** 343.30 (2j) (a) of the statutes is amended to read:

18 343.30 (2j) (a) A court may ~~revoke~~ suspend a person's operating privilege upon
19 the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall ~~revoke~~
20 suspend a person's operating privilege upon the person's 2nd or subsequent
21 conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The
22 ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining
23 prior convictions for purposes of this paragraph, the 5-year period shall be measured
24 from the dates of the violations that resulted in the convictions. Each conviction
25 under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s.

1 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be
2 counted as a single conviction.

3 SECTION 13. 343.31 (1) (hm) of the statutes is repealed.

4 SECTION 14. 343.44 (1) (am) of the statutes is repealed.

5 SECTION 15. 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and
6 amended to read:

7 343.44 (2) (ag) 1. Any ~~Except as provided in subds. 2. and 3.~~^{to 4.} any person who
8 violates sub. (1) (a) ~~or a local ordinance in conformity therewith~~ shall be required to
9 forfeit not less than \$50 nor more than \$200.

10 SECTION 16. 343.44 (2) (ad) of the statutes is created to read:

11 343.44 (2) (ad) "Great bodily harm" has the meaning given in s. 939.22 (14).

12 SECTION 17. 343.44 (2) (ag) 2. c. and d. of the statutes are created to read:

13 343.44 (2) (ag) 2. c. Required to forfeit not less than \$5,000 nor more than
14 \$7,500 if the person causes great bodily harm to another person.

15 d. Required to forfeit not less than \$7,500 nor more than \$10,000 if the person
16 causes the death of another person.

17 SECTION 18. 343.44 (2) (ag) 3. of the statutes is created to read:

18 343.44 (2) (ag) 3. ~~Any~~^{Except as provided in subd. 4.5} person who violates sub. (1) (a) knowing that his or her
19 operating privilege has been suspended, who has been convicted of a previous
20 violation of sub. (1) (a), or of a local ordinance in conformity with sub. (1) (a), within
21 the preceding 5-year period, and who, in the course of violating sub. (1) (a), causes
22 great bodily harm to another person ~~or the death of another person,~~ shall be:

23 a. ~~Guilty of a Class I felony if the person causes great bodily harm to another~~
24 ~~person.~~

25 b. ~~Guilty of a Class H felony if the person causes the death of another person.~~

Insert
9-25

****NOTE: The term "knowing" is used in this provision in a manner consistent with the discussion at the meeting on March 27. This is not necessarily the same manner in which "knowingly" is used in s. 343.44 (1) (am).

1 **SECTION 19.** 343.44 (2) (am) of the statutes is repealed.

2 **SECTION 20.** 343.44 (2) (ar) 2. of the statutes is created to read:

3 343.44 (2) (ar) 2. Except as provided in subd. 3., any person who violates sub.
4 (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one year
5 in the county jail or both if the person has been convicted of a previous violation of
6 sub. (1) (b), or of a local ordinance in conformity with sub. (1) (b), within the preceding
7 5-year period.

8 **SECTION 21.** 343.44 (2) (ar) 3. (intro.), a. and b. of the statutes are created to
9 read:

10 343.44 (2) (ar) 3. (intro.) Any person who violates sub. (1) (b) and, in the course
11 of the violation, causes damage to the property of another, injury or great bodily harm
12 to another person, or the death of another person, shall be:

13 a. Fined not less than \$200 nor more than \$2,500 or imprisoned for not more
14 than one year in the county jail or both if the person causes damage to the property
15 of another but does not cause death or injury to another person.

16 b. Fined not less than \$500 nor more than \$5,000 or imprisoned for not more
17 than one year in the county jail or both if the person causes injury to another person
18 but the other person does not suffer great bodily harm or death.

19 **SECTION 22.** 343.44 (2) (as) of the statutes is renumbered 343.44 (2) (ar) 1. and
20 amended to read:

21 343.44 (2) (ar) 1. Any Except as provided in subds. 2. and 3., any person who
22 violates sub. (1) (b) after July 27, 2005, shall forfeit not more than \$2,500, except that,
23 if the person has been convicted of a previous violation of sub. (1) (b) within the

1 preceding 5-year period or if the revocation identified under sub. (1) (b) resulted from
2 an offense that may be counted under s. 343.307 (2), the penalty under par. (b) shall
3 apply.

4 SECTION 23. 343.44 (2) (b) (intro.) of the statutes is amended to read:

5 343.44 (2) (b) (intro.) ~~Except as provided in pars. (am) and (as), any person who~~
6 ~~violates sub. (1) (b) or (d) shall be fined not more than \$2,500 or imprisoned for not~~
7 ~~more than one year in the county jail or both. In imposing a sentence under this~~
8 ~~paragraph, or a local ordinance in conformity with this paragraph, par. (ar) 2. or 3.~~
9 ~~or (br), the court shall review the record and consider the following:~~

10 SECTION 24. 343.44 (2) (br) of the statutes is created to read:

11 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than
12 \$2,500 or imprisoned for not more than one year in the county jail or both.

13 SECTION 25. 343.44 (2) (e) of the statutes is renumbered 343.44 (2) (ag) 2.
14 (intro.) and amended to read:

15 343.44 (2) (ag) 2. (intro.) ~~Any~~ Except as provided in subd. 3^s and 4. any person who
16 violates sub. (1) (a) and, in the course of a the violation of sub. (1) (am) or (b) or a
17 local ordinance in conformity therewith, causes damage to the property of another,
18 injury or great bodily harm to another person, or the death of another person, shall
19 be required:

20 a. Required to forfeit not less than \$200 nor more than \$1,000 if the person
21 causes damage to the property of another but does not cause death or injury to
22 another person.

23 SECTION 26. 343.44 (2) (f) of the statutes is renumbered 343.44 (2) (ag) 2. b. and
24 amended to read:

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1791/P3ins
ARG:.....

INSERT ANAL:

(no P) However, if the person has a prior OWS conviction in the preceding five-year period and knows that his or her operating privilege has been suspended, the person is guilty of a Class I felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both, if he or she causes great bodily harm to another person. Also, if the person knows that his or her operating privilege has been suspended, the person is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both, if he or she causes the death of another person.

INSERT 6-19:

343.05 (5) (b) 6. Any Except as provided in subd. 2. and sub. (6), any person who violates sub. (3) (a) knowing that he or she does not possess a valid operator's license and who, in the course of operating a motor vehicle which is not a commercial motor vehicle upon a highway in this state knowingly without a valid operator's license issued to the person by the department or knowingly with an operator's license that has been revoked, suspended, or canceled violating sub. (3) (a), causes the death of another person is guilty of a Class A misdemeanor H felony.

INSERT 9-25:

SECTION 1. 343.44 (2) (ag) 4. of the statutes is created to read:

343.44 (2) (ag) 4. Any person who violates sub. (1) (a) knowing that his or her operating privilege has been suspended and who, in the course of violating sub. (1) (a), causes the death of another person shall be guilty of a Class H felony.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1791/P3dn

ARG:.....

lmk

(date)

ATTN: Christian Moran

Please review the attached draft carefully to ensure that it is consistent with your intent. ✓

There was some discussion at our May 2 meeting of the meaning of "cause" in this draft. As discussed, the term "cause" is derived from current law and, while it may be quite strict for the defendant, I believe it is relatively unambiguous. ↓ The bill provides for enhanced penalties if, in the course of a violation, the defendant causes damage or injury. I believe the provisions of the bill require the court or jury to determine whether there was a violation and then determine whether, at the time of the violation, any property was damaged or any person injured. ↓ I believe the court or jury must then determine whether, among the causes of damage or injury, the defendant was one of them; that is, whether *any* of the cause is attributable to the defendant. ↓ Presumably this issue will arise when there is a traffic accident involving a driver who is, for example, operating while suspended (OWS). ↓ In contrast to the standards for civil liability, I believe that the bill provides for a penalty enhancement imposed on the OWS driver if he or she bears *any* percentage of fault for the damage or injury in the accident, but that he or she must bear more than 0% of the fault. ↓ As for the "rear-end" scenario discussed at our meeting, I believe it would be a question for the court or jury whether the rear-ended driver bore any fault for the accident and resulting damage or injury to the rear-ending driver. ↓

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft. ↓

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

M/W / Christo

1791

6/27

DOT provisions stay

- no "injury" or damage —
scrap changes; scrap c/c
- go back to pre-Act 412

• GBH → death

• not knowing: civil

• knowing → felony

Preliminary OAR Draft (LRB-1791/P3) for Discussion Purposes

Act 412 Revisions

Offense	2005 Act 412 Knowing-OWS, Knowing-OVL or OAR*	OWS, OWL, OAR (Not Knowing)	Knowing-OWS, OWL, OAR
Great Bodily Harm	\$10,000/9 mos	\$5,000-\$7,500 mandatory revoke	\$10,000/3.5 yrs (1 Felony) mandatory revoke <i>(2nd or more in 5 yrs)</i>
Death	\$10,000/9 mos	\$7,500-\$10,000 mandatory revoke	\$10,000/6 yrs (H Felony) mandatory revoke <i>(Any offense)</i>

7/10 He w/ Christian
 → assume prior offenses are
 not part of criteria

* To be found in violation of the new offenses (and subject to the new penalties) created by Act 412 related to OWL and OWS, someone must be "knowingly" driving without a valid license or with a suspended license.
 ** Penalties listed w/out a range are maximum penalties. (e.g., someone convicted of a Class H Felony may be fined up to \$10,000 and imprisoned up to 6 years).

DOT Provisions

Offense	Current Law	LRB-1791/P3
4 th OAR, OWS or OWD w/in 5 yrs	Automatic court ordered revoke and DOT admin revocation.	Makes court ordered revoke permissive and removes DOT admin revocation.
Illegal railroad crossing	Permissive revoke for 1 st offense. Mandatory revoke for 2+ offenses.	Suspension for all offenses.
	\$2,500 forfeiture max	
1st OAR(alcohol or drug traffic violation)	\$2,500 max fine and/or 1 yr max	\$2,500 max forfeiture (local ordinance convictions counted-see below)
2+ OAR	\$2,500 max fine and/or 1 yr max (local ordinance convictions not counted)	\$2,500 max fine and/or 1 yr max (local ordinance convictions counted)
"Knowing" OWS	\$200 max	"Knowing" OWS eliminated as a separate and distinct violation.



State of Wisconsin
2007 - 2008 LEGISLATURE

soon

LRB-1791/23 p4

ARG:lmk:nwn

in 7/10

stays RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

ReGen ✓

1 AN ACT to repeal 343.31 (1) (hm), 343.44 (1) (am) and 343.44 (2) (am); to
2 renumber 343.05 (5) (a); to renumber and amend 343.05 (5) (b) 3. a., 343.05
3 (5) (b) 3. b., 343.05 (5) (b) 3. c., 343.05 (5) (b) 3. d., 343.44 (2) (a), 343.44 (2) (as),
4 343.44 (2) (e), 343.44 (2) (f), 343.44 (2) (g) and 343.44 (2) (h); to amend 343.05
5 (5) (b) 1., 343.30 (1g), 343.30 (2j) (a) and 343.44 (2) (b) (intro.); and to create
6 343.05 (5) (ag), 343.05 (5) (b) 4. c., 343.05 (5) (b) 5. (intro.), a., and b., 343.30 (1g)
7 (c) and (d), 343.44 (2) (ad), 343.44 (2) (ag) 2. c. and d., 343.44 (2) (ag) 3., 343.44
8 (2) (ag) 4., 343.44 (2) (ar) 2., 343.44 (2) (ar) 3. (intro.), a., and b. and 343.44 (2)
9 (br) of the statutes; relating to: operating a motor vehicle without a valid
10 driver's license or after suspension or revocation of an operating privilege and
11 providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from operating a motor vehicle on the highway during any period in which the person's motor vehicle operating privilege is suspended (operating while suspended or OWS) or revoked (operating after revocation or OAR) or, with limited exceptions, if the person does not possess a valid

operator's license issued by the Department of Transportation (DOT) that is not revoked, suspended, canceled, or expired (operating without a license or OWL).

Under current law, a person convicted of OWS must forfeit not less than \$50 nor more than \$200. In addition, a person convicted of "knowing" OWS may be required to forfeit not more than \$200. A person convicted of first-offense OAR must forfeit not more than \$2,500 unless the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a "knowing" OWS violation or OAR violation, causes: (a) damage to the property of another must forfeit \$1,000; (b) injury to another person must forfeit \$5,000; or (c) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: (a) damage to the property of another, the person must forfeit \$1,000; (b) injury to another person, the person must forfeit \$5,000; or (c) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill provides that a person convicted of first-offense OAR must forfeit not more than \$2,500 regardless of the underlying reason for the revocation, and also provides that violation of a local OAR ordinance may be counted for purposes of determining whether a person has any prior OAR conviction. The bill ~~also~~ repeals "knowing" OWS as a separate and distinct violation. The bill ~~also revises the~~ penalties for OWS, OAR, and OWL violations where the person, in the course of the violation, causes ~~damage to the property of another, injury to another person, or~~ great bodily harm or death to another person.

Under the bill, a person convicted of OWS who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must forfeit not less than \$200 nor more than \$1,000; (b) injury to another person but not death or great bodily harm must forfeit not less than \$500 nor more than \$5,000; (c) great bodily harm to another person must forfeit not less than \$5,000

and repeals all other provisions of 2005 Wisconsin Act 412

Creates new

insert
apart
A

nor more than \$7,500; or (d) the death of another person must forfeit not less than \$7,500 nor more than \$10,000. However, if the person has a prior OWS conviction in the preceding five-year period and knows that his or her operating privilege has been suspended, the person is guilty of a Class I felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both, if he or she causes great bodily harm to another person. Also, if the person knows that his or her operating privilege has been suspended, the person is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both, if he or she causes the death of another person.

Under the bill, a person convicted of OAR who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must be fined not less than \$200 nor more than \$2,500 or imprisoned for not more than one year in the county jail or both; (b) injury to another person but not death or great bodily harm must be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both; (c) great bodily harm to another person is guilty of a Class I felony; or (d) the death of another person is guilty of a Class H felony.

Under the bill, with limited exceptions, a person who is convicted for an OWL violation knowing that he or she does not possess a valid operator's license and who, in the course of the OWL violation, causes: (a) damage to the property of another but not death or injury to another person must forfeit not less than \$200 nor more than \$1,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than \$200 nor more than \$1,000 or imprisoned for not more than 90 days in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years; (b) injury to another person but not death or great bodily harm must forfeit not less than \$500 nor more than \$5,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than nine months in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years; (c) great bodily harm to another person must forfeit not less than \$5,000 nor more than \$7,500 if the person has not been convicted of a previous OWL violation within the preceding three years and is guilty of a Class I felony if the person has been convicted of a previous OWL violation within the preceding three years; or (d) the death of another person is guilty of a Class H felony.

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period. In addition, DOT must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of

OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period.

This bill makes court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD permissive rather than mandatory and eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD. In addition, the bill requires a court to revoke a person's operating privilege if the person is convicted of OWS and, in the course of the violation, the person causes great bodily harm or death to another person. ~~The bill allows a court to revoke a person's operating privilege if the person is convicted of OWS and, in the course of the violation, the person causes injury to another person.~~

OWL ^
>=<!
for OAR

Insert
ANAL-6

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five-year period. The revocation is for six months.

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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. 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2 SECTION 2. 343.05 (5) (ag) of the statutes is created to read:

3 343.05 (5) (ag) In this subsection, "great bodily harm" has the meaning given
4 in s. 939.22 (14).

5 SECTION 3. 343.05 (5) (b) 1. of the statutes is amended to read:

6 343.05 (5) (b) 1. Except as provided in ~~subd.~~ subds. 2. ~~or 3.~~ ⁵ ~~to 6.~~ and sub. (6),
7 any person who violates sub. (3) (a) may be required to forfeit not more than \$200 for

1 the first offense, may be fined not more than \$300 and imprisoned for not more than
2 30 days for the 2nd offense occurring within 3 years, and may be fined not more than
3 \$500 and imprisoned for not more than 6 months for the 3rd or subsequent offense
4 occurring within 3 years. A In this paragraph, a violation of a local ordinance in
5 conformity with this section or a violation of a law of a federally recognized American
6 Indian tribe or band in this state in conformity with this section shall count as a
7 previous offense.

8 **SECTION 4.** 343.05 (5) (b) 3. a. of the statutes is renumbered 343.05 (5) (b) 4.
9 (intro.) and amended to read:

10 343.05 (5) (b) 4. (intro.) Any Except as provided in subds. 2. and 6. and sub. (6),
11 any person who violates sub. (3) (a) knowing that he or she does not possess a valid
12 operator's license, who has not been convicted of a previous violation of sub. (3) (a)
13 within the preceding 3-year period, and who, in the course of operating a motor
14 vehicle which is not a commercial motor vehicle upon a highway in this state
15 knowingly without a valid operator's license issued to the person by the department
16 or knowingly with an operator's license that has been revoked, suspended, or
17 anceled, violating sub. (3) (a), causes damage to the property of another, or injury
18 or great bodily harm to another person, shall be required:

19 a. Required to forfeit not less than \$200 nor more than \$1,000 if the person
20 causes damage to the property of another but does not cause injury to another person.

21 **SECTION 5.** 343.05 (5) (b) 3. b. of the statutes is renumbered 343.05 (5) (b) 4. b.
22 and amended to read:

23 343.05 (5) (b) 4. b. Any person who, in the course of operating a motor vehicle
24 which is not a commercial motor vehicle upon a highway in this state knowingly
25 without a valid operator's license issued to the person by the department or

next
5-7

1 knowingly with an operator's license that has been revoked, suspended, or canceled,
2 causes injury to another person shall be required Required to forfeit not less than
3 \$500 nor more than \$5,000 if the person causes injury to another person but the other
4 person does not suffer great bodily harm.

5 **SECTION 6.** 343.05 (5) (b) 3. c. of the statutes is renumbered 343.05 (5) (b) 5. c.
6 and amended to read:

7 343.05 (5) (b) 5. c. Any person who, in the course of operating a motor vehicle
8 which is not a commercial motor vehicle upon a highway in this state knowingly
9 without a valid operator's license issued to the person by the department or
10 knowingly with an operator's license that has been revoked, suspended, or canceled,
11 causes great bodily harm to another person is guilty Guilty of a Class A misdemeanor
12 I felony if the person causes great bodily harm to another person.

13 **SECTION 7.** 343.05 (5) (b) 3. d. of the statutes is renumbered 343.05 (5) (b) 6. and
14 amended to read:

15 343.05 (5) (b) 6. Any Except as provided in subd. 2. and sub. (6), any person who
16 violates sub. (3) (a) knowing that he or she does not possess a valid operator's license
17 and who, in the course of operating a motor vehicle which is not a commercial motor
18 vehicle upon a highway in this state knowingly without a valid operator's license
19 issued to the person by the department or knowingly with an operator's license that
20 has been revoked, suspended, or canceled violating sub. (3) (a), causes the death of
21 another person is guilty of a Class A misdemeanor H felony.

22 **SECTION 8.** 343.05 (5) (b) 4. c. of the statutes is created to read:

23 343.05 (5) (b) 4. c. Required to forfeit not less than \$5,000 nor more than \$7,500
24 if the person causes great bodily harm to another person.

25 **SECTION 9.** 343.05 (5) (b) 5. (intro.), a. and b. of the statutes are created to read:

1 343.05 (5) (b) 5. (intro.) Except as provided in subds. 2. and 6. and sub. (6), any
2 person who violates sub. (3) (a) knowing that he or she does not possess a valid
3 operator's license, who has been convicted of a previous violation of sub. (3) (a) within
4 the preceding 3-year period, and who, in the course of violating sub. (3) (a), causes
5 damage to the property of another, or injury or great bodily harm to another person,
6 shall be:

7 a. Fined not less than \$200 nor more than \$1,000 or imprisoned for not more
8 than 90 days in the county jail or both if the person causes damage to the property
9 of another but does not cause injury to another person.

10 b. Fined not less than \$500 nor more than \$5,000 or imprisoned for not more
11 than 9 months in the county jail or both if the person causes injury to another person
12 but the other person does not suffer great bodily harm.

13 **SECTION 10.** 343.30 (1g) of the statutes is amended to read:

14 343.30 (1g) (a) ~~Except as provided in par.~~ Subject to pars. (b) ~~to (d)~~ ^{and (c)}, a court may
15 suspend a person's operating privilege for any period not exceeding 6 months upon
16 the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance
17 in conformity therewith.

18 (b) ~~A~~ ^c Except as provided in par. (d), a court shall may revoke a person's
19 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or
20 (d) or a local ordinance in conformity therewith if the person has been convicted of
21 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under
22 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the
23 5-year period preceding the violation. The

mslt
7-12

1 ¹ ~~(e)~~ Any revocation under this subsection shall be for a period of 6 months,
 2 unless the court orders a period of revocation of less than 6 months and places its
 3 reasons for ordering the lesser period of revocation on the record.

4 **SECTION 11.** 343.30 (1g) (c) ~~and (d)~~ ^{is} of the statutes ~~are~~ created to read:

5 343.30 (1g) (c) A court may revoke a person's operating privilege upon the
 6 person's conviction for violating s. 343.44 (1) (a) or a local ordinance in conformity
 7 therewith if the person, in the course of the violation, causes injury to another person
 8 but the other person does not suffer great bodily harm or death.

9 (no P) (d) A court shall revoke a person's operating privilege upon the person's
 10 conviction for violating s. 343.44 (1) (a) ^{or (b)} or a local ordinance in conformity ^{s. 343.44(1)(a) or (b)} therewith
 11 if the person, in the course of the violation, causes great bodily harm, as defined in
 12 s. 939.22 (14), to another person or the death of another person.

13 **SECTION 12.** 343.30 (2j) (a) of the statutes is amended to read:

14 343.30 (2j) (a) A court may ~~revoke~~ suspend a person's operating privilege upon
 15 the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall ~~revoke~~
 16 suspend a person's operating privilege upon the person's 2nd or subsequent
 17 conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The
 18 ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining
 19 prior convictions for purposes of this paragraph, the 5-year period shall be measured
 20 from the dates of the violations that resulted in the convictions. Each conviction
 21 under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s.
 22 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be
 23 counted as a single conviction.

24 **SECTION 13.** 343.31 (1) (hm) of the statutes is repealed.

25 **SECTION 14.** 343.44 (1) (am) of the statutes is repealed.

14 sec
8-24

1 **SECTION 15.** 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and
2 amended to read:

3 343.44 (2) (ag) 1. ~~Any~~ Except as provided in subds. 2. ^{and 3.} to 4., any person who
4 violates sub. (1) (a) ~~or a local ordinance in conformity therewith~~ shall be required to
5 forfeit not less than \$50 nor more than \$200.

6 **SECTION 16.** 343.44 (2) (ad) of the statutes is created to read:

7 343.44 (2) (ad) "Great bodily harm" has the meaning given in s. 939.22 (14).

8 **SECTION 17.** 343.44 (2) (ag) 2. c. and d. of the statutes are created to read:

9 343.44 (2) (ag) 2. c. Required to forfeit not less than \$5,000 nor more than
10 \$7,500 if the person causes great bodily harm to another person.

11 d. Required to forfeit not less than \$7,500 nor more than \$10,000 if the person
12 causes the death of another person.

13 **SECTION 18.** 343.44 (2) (ag) 3. of the statutes is created to read:

14 343.44 (2) (ag) 3. Except as provided in subd. 4., any person who violates sub.
15 (1) (a) knowing that his or her operating privilege has been suspended, who has been
16 convicted of a previous violation of sub. (1) (a), or of a local ordinance in conformity
17 with sub. (1) (a), within the preceding 5-year period, and who, in the course of
18 violating sub. (1) (a), causes great bodily harm to another person shall be guilty of
19 a Class I felony.

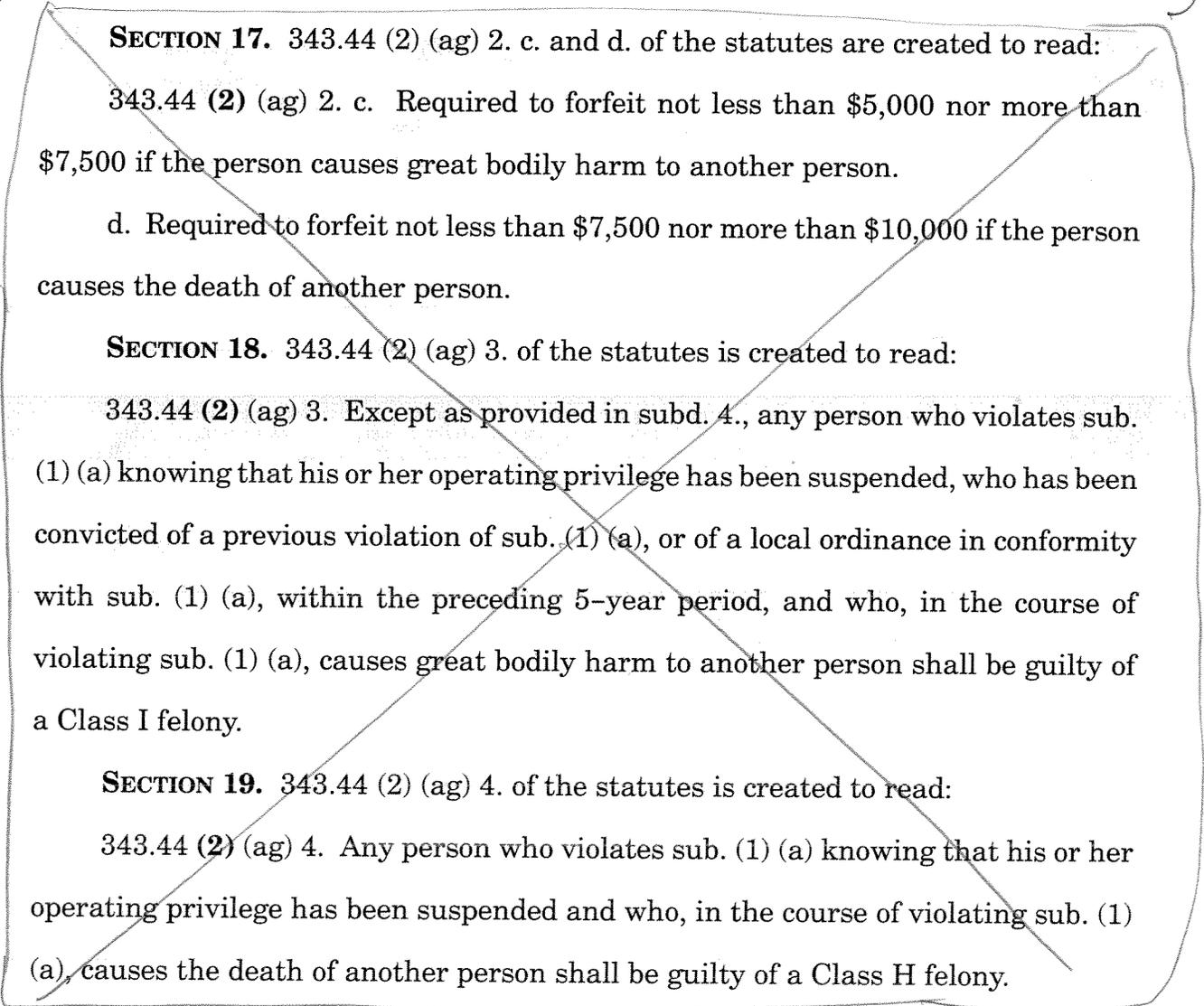
20 **SECTION 19.** 343.44 (2) (ag) 4. of the statutes is created to read:

21 343.44 (2) (ag) 4. Any person who violates sub. (1) (a) knowing that his or her
22 operating privilege has been suspended and who, in the course of violating sub. (1)
23 (a), causes the death of another person shall be guilty of a Class H felony.

24 **SECTION 20.** 343.44 (2) (am) of the statutes is repealed.

25 **SECTION 21.** 343.44 (2) (ar) 2. of the statutes is created to read:

Insert
9-7



1 343.44 (2) (ar) 2. Except as provided in subd. ⁵~~2~~, any person who violates sub.
 2 (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one year
 3 in the county jail or both if the person has been convicted of a previous violation of
 4 sub. (1) (b), or of a local ordinance in conformity with sub. (1) (b), within the preceding
 5 5-year period.

insert
10-5

6 **SECTION 22.** 343.44 (2) (ar) 3. (intro.), a. and b. of the statutes are created to
 7 read:

8 343.44 (2) (ar) 3. (intro.) Any person who violates sub. (1) (b) and, in the course
 9 of the violation, causes damage to the property of another, injury or great bodily harm
 10 to another person, or the death of another person, shall be:

11 a. Fined not less than \$200 nor more than \$2,500 or imprisoned for not more
 12 than one year in the county jail or both if the person causes damage to the property
 13 of another but does not cause death or injury to another person.

14 b. Fined not less than \$500 nor more than \$5,000 or imprisoned for not more
 15 than one year in the county jail or both if the person causes injury to another person
 16 but the other person does not suffer great bodily harm or death.

17 **SECTION 23.** 343.44 (2) (as) of the statutes is renumbered 343.44 (2) (ar) 1. and
 18 amended to read:

19 343.44 (2) (ar) 1. Any Except as provided in subds. 2. and 3. ^{to 5.} any person who
 20 violates sub. (1) (b) after July 27, 2005, shall forfeit not more than \$2,500, except that,
 21 if the person has been convicted of a previous violation of sub. (1) (b) within the
 22 preceding 5-year period or if the revocation identified under sub. (1) (b) resulted from
 23 an offense that may be counted under s. 343.307 (2), the penalty under par. (b) shall
 24 apply.

25 **SECTION 24.** 343.44 (2) (b) (intro.) of the statutes is amended to read:

1 343.44 (2) (b) (intro.) ~~Except as provided in pars. (am) and (as), any person who~~
 2 ~~violates sub. (1) (b) or (d) shall be fined not more than \$2,500 or imprisoned for not~~
 3 ~~more than one year in the county jail or both. In imposing a sentence under this~~
 4 ~~paragraph, or a local ordinance in conformity with this paragraph, par. (ar) 2.~~ ^{to 5.} ~~or 3.~~
 5 ~~or (br), the court shall review the record and consider the following:~~

6 **SECTION 25.** 343.44 (2) (br) of the statutes is created to read:

7 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than
 8 \$2,500 or imprisoned for not more than one year in the county jail or both.

9 **SECTION 26.** 343.44 (2) (e) of the statutes is renumbered 343.44 (2) (ag) 2.
 10 (intro.) and amended to read:

11 343.44 (2) (ag) 2. (intro.) Any Except as provided in subs. 3. and 4., any person
 12 who violates sub. (1) (a) and, in the course of - a the violation of sub. (1) (am) or (b)
 13 or a local ordinance in conformity therewith, causes damage to the property of
 14 another, injury or great bodily harm to another person, or the death of another
 15 person, shall be required:

16 a. Required to forfeit not less than \$200 nor more than \$1,000 if the person
 17 causes damage to the property of another but does not cause death or injury to
 18 another person.

19 **SECTION 27.** 343.44 (2) (f) of the statutes is renumbered 343.44 (2) (ag) 2. b. and
 20 amended to read:

21 343.44 (2) (ag) 2. b. Any person who, in the course of a violation of sub. (1) (am)
 22 or (b) or a local ordinance in conformity therewith, causes injury to another person
 23 shall be required Required to forfeit not less than \$500 nor more than \$5,000 if the
 24 person causes injury to another person but the other person does not suffer great
 25 bodily harm or death.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1791/P4ins
ARG:.....

INSERT ANAL-A:

Under the bill, a person convicted of OWL, OWS, or OAR who, in the course of the violation, causes great bodily harm to another person must forfeit not less than \$5,000 nor more than \$7,500 if, at the time of the violation, the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended or revoked ~~and~~ is guilty of a Class I felony if the person knew. A Class I felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both. If the person causes the death of another in the course of the OWL, OWS, or OAR violation, the person must forfeit not less than \$7,500 nor more than \$10,000 if the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended or revoked ~~and~~ is guilty of a Class H felony if the person knew. A Class H felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both. If a person who causes great bodily harm or death to another person in the course of an OAR violation has also been convicted of a previous OAR violation within the preceding 5-year period, the person is subject to the highest applicable penalty.

INSERT ANAL-B:

(no P) The bill also provides that, as with OWS and OAR, DOT may revoke a resident's operating privilege if the resident is convicted in another state for an OWL offense in the course of which the person causes great bodily harm or death to another person. ✓

INSERT 5-7:

SECTION 1. 343.05 (5) (b) 3. of the statutes is repealed. ✓

SECTION 2. 343.05 (5) (b) 4. and 5. of the statutes are created to read:

343.05 (5) (b) 4. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3) (a) and, in the course of the violation, causes great bodily harm to another person is required to forfeit not less than \$5,000 nor more than \$7,500, except that, if the person knows at the time of the violation that he or she does not possess a valid operator's license, the person is guilty of a Class I felony. ✓

5. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3) (a) and, in the course of the violation, causes the death of another person is required to forfeit not less than \$7,500 nor more than \$10,000, except that, if the person knows at the time of the violation that he or she does not possess a valid operator's license, the person is guilty of a Class H felony. ✓

INSERT 7-12:

SECTION 3. 343.30 (1d) of the statutes is created to read:

343.30 (1d) A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.05 (3) (a) or a local ordinance in conformity therewith if the person, in the course of the violation, causes great bodily harm, as defined in s. 939.22 (14), to another person or the death of another person. Any revocation under this subsection shall be for a period of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record. ✓

INSERT 8-24:

SECTION 4. 343.31 (2m) of the statutes is amended to read:

343.31 (2m) The department may suspend or revoke, respectively, the operating privilege of any resident upon receiving notice of the conviction of that person under a law of another jurisdiction or a federally recognized American Indian tribe or band in this state for an offense which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have permitted suspension or revocation of the person's operating privilege under s. 343.30 (1d) or (1g). Upon receiving similar notice with respect to a nonresident, the department may suspend or revoke the privilege of the nonresident

to operate a motor vehicle in this state. The suspension or revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state. A suspension or revocation under this subsection shall be for any period not exceeding 6 months. ✓

History: 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295; 1999 a. 109, 143; 2001 a. 16, 38, 109; 2003 a. 30, 97, 200; 2005 a. 387.

INSERT 9-7:

SECTION 5. 343.44 (2) (ag) 2. and 3. of the statutes are created to read:

343.44 (2) (ag) 2. Any person who violates sub. (1) (a) and, in the course of the violation, causes great bodily harm to another person is required to forfeit not less than \$5,000 nor more than \$7,500, except that, if the person knows at the time of the violation that his or her operating privilege has been suspended, the person is guilty of a Class I felony. ✓

3. Any person who violates sub. (1) (a) and, in the course of the violation, causes the death of another person is required to forfeit not less than \$7,500 nor more than \$10,000, except that, if the person knows at the time of the violation that his or her operating privilege has been suspended, the person is guilty of a Class H felony. ✓

INSERT 10-5:

SECTION 6. 343.44 (2) (ar) 3. to 5. of the statutes are created to read:

343.44 (2) (ar) 3. Except as provided in subd. 5., any person who violates sub. (1) (b) and, in the course of the violation, causes great bodily harm to another person is required to forfeit not less than \$5,000 nor more than \$7,500, except that, if the person knows at the time of the violation that his or her operating privilege has been revoked, the person is guilty of a Class I felony. ✓

✓

4. Except as provided in subd. 5., any person who violates sub. (1) (b) and, in the course of the violation, causes the death of another person is required to forfeit not less than \$7,500 nor more than \$10,000, except that, if the person knows at the time of the violation that his or her operating privilege has been revoked, the person is guilty of a Class H felony. ✓

5. If a person who violates sub. (1) (b) and, in the course of the violation, causes great bodily harm to another person or the death of another person has been convicted of a previous violation of sub. (1) (b), or of a local ordinance in conformity with sub. (1) (b), within the preceding 5-year period, the person shall be subject to the highest applicable penalty under subd. ^s2. to 4. ✓

INSERT 12-12:

SECTION 7. 343.44 (2) (e) to (h) of the statutes are repealed. ✓

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

LRB-1791/P4dn

ARG:.....

ATTN: Christian Moran

I encountered some complications in preparing this draft. I created s. 343.44 (2) (ar) 5. to try to straighten out the potential overlapping penalties that might apply if a person has OAR prior offenses and causes great bodily harm or death. ✓ A similar situation might occur with respect to OWL violations. ✓ However, for OWL violations, there is no easy or logical way to straighten out these overlapping penalties. ✓ If a person has prior OWL offenses and causes great bodily harm, should the court apply the higher monetary amounts established as civil forfeitures under this bill or the criminal penalties that include lower monetary amounts and jail time under current s. 343.05 (5) (b) 1.? ✓

As discussed, the attached draft does not consider prior offenses in establishing the penalties for persons who commit knowing OWS, OWL, or OAR violations. ✓

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

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

LRB-1791/P4dn
ARG:lmk:nwn

July 13, 2007

ATTN: Christian Moran

I encountered some complications in preparing this draft. I created s. 343.44 (2) (ar) 5. to try to straighten out the potential overlapping penalties that might apply if a person has OAR prior offenses and causes great bodily harm or death. A similar situation might occur with respect to OWL violations. However, for OWL violations, there is no easy or logical way to straighten out these overlapping penalties. If a person has prior OWL offenses and causes great bodily harm, should the court apply the higher monetary amounts established as civil forfeitures under this bill or the criminal penalties that include lower monetary amounts and jail time under current s. 343.05 (5) (b) 1.?

As discussed, the attached draft does not consider prior offenses in establishing the penalties for persons who commit knowing OWS, OWL, or OAR violations.

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



State of Wisconsin
2007 - 2008 LEGISLATURE

soon

in 9/20

LRB-1791/PA 1

ARG:lmk:nwn

stays RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

Reger

1 **AN ACT to repeal** 343.05 (5) (b) 3., 343.31 (1) (hm), 343.44 (1) (am), 343.44 (2) (am)
2 and 343.44 (2) (e) to (h); **to renumber** 343.05 (5) (a); **to renumber and amend**
3 343.44 (2) (a) and 343.44 (2) (as); **to amend** 343.05 (5) (b) 1., 343.30 (1g), 343.30
4 (2j) (a), 343.31 (2m) and 343.44 (2) (b) (intro.); and **to create** 343.05 (5) (ag),
5 343.05 (5) (b) 4. and 5., 343.30 (1d), 343.30 (1g) (c), 343.44 (2) (ad), 343.44 (2)
6 (ag) 2. and 3., 343.44 (2) (ar) 2., 343.44 (2) (ar) 3. to 5. and 343.44 (2) (br) of the
7 statutes; **relating to:** operating a motor vehicle without a valid driver's license
8 or after suspension or revocation of an operating privilege and providing
9 penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from operating a motor vehicle on the highway during any period in which the person's motor vehicle operating privilege is suspended (operating while suspended or OWS) or revoked (operating after revocation or OAR) or, with limited exceptions, if the person does not possess a valid operator's license issued by the Department of Transportation (DOT) that is not revoked, suspended, canceled, or expired (operating without a license or OWL).

Under current law, a person convicted of OWS must forfeit not less than \$50 nor more than \$200. In addition, a person convicted of "knowing" OWS may be required

to forfeit not more than \$200. A person convicted of first-offense OAR must forfeit not more than \$2,500 unless the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a "knowing" OWS violation or OAR violation, causes: (a) damage to the property of another must forfeit \$1,000; (b) injury to another person must forfeit \$5,000; or (c) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: (a) damage to the property of another, the person must forfeit \$1,000; (b) injury to another person, the person must forfeit \$5,000; or (c) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill provides that a person convicted of first-offense OAR must forfeit not more than \$2,500 regardless of the underlying reason for the revocation, and also provides that violation of a local OAR ordinance may be counted for purposes of determining whether a person has any prior OAR conviction. The bill repeals "knowing" OWS as a separate and distinct violation and repeals all other provisions of 2005 Wisconsin Act 412. The bill creates new penalties for OWS, OAR, and OWL violations where the person, in the course of the violation, causes great bodily harm or death to another person.

Under the bill, a person convicted of OWL, OWS, or OAR who, in the course of the violation, causes great bodily harm to another person: (1) must forfeit not less than \$5,000 nor more than \$7,500 if, at the time of the violation, the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended or revoked; or (2) is guilty of a Class I felony if the person knew. A Class I felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both. If the person causes the death of another in the course of the OWL, OWS, or OAR violation, the person: (1) must forfeit not less than \$7,500 nor more than \$10,000 if the person did

not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended or revoked; or (2) is guilty of a Class H felony if the person knew. A Class H felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both. If a person who causes great bodily harm or death to another person in the course of an OAR violation has also been convicted of a previous OAR violation within the preceding five-year period, the person is subject to the highest applicable penalty.

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period. In addition, DOT must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period.

This bill makes court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD permissive rather than mandatory and eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD. In addition, the bill requires a court to revoke a person's operating privilege if the person is convicted of OWL, OWS, or OAR and, in the course of the violation, the person causes great bodily harm or death to another person. The bill also provides that, as with OWS and OAR, DOT may revoke a resident's operating privilege if the resident is convicted in another state for an OWL offense in the course of which the person causes great bodily harm or death to another person.

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five-year period. The revocation is for six months.

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2 **SECTION 2.** 343.05 (5) (ag) of the statutes is created to read:

3 343.05 (5) (ag) In this subsection, "great bodily harm" has the meaning given
4 in s. 939.22 (14).

5 **SECTION 3.** 343.05 (5) (b) 1. of the statutes is amended to read:

6 343.05 (5) (b) 1. Except as provided in ~~subd. 2. or 3. to 5.~~ and sub. (6),
7 any person who violates sub. (3) (a) may be required to forfeit not more than \$200 for
8 the first offense, may be fined not more than \$300 and imprisoned for not more than
9 30 days for the 2nd offense occurring within 3 years, and may be fined not more than
10 \$500 and imprisoned for not more than 6 months for the 3rd or subsequent offense
11 occurring within 3 years. ~~A~~ In this paragraph, a violation of a local ordinance in
12 conformity with this section or a violation of a law of a federally recognized American
13 Indian tribe or band in this state in conformity with this section shall count as a
14 previous offense.

15 **SECTION 4.** 343.05 (5) (b) 3. of the statutes is repealed.

16 **SECTION 5.** 343.05 (5) (b) 4. and 5. of the statutes are created to read:

17 343.05 (5) (b) 4. Except as provided in subd. 2. and sub. (6), any person who
18 violates sub. (3) (a) and, in the course of the violation, causes great bodily harm to
19 another person is required to forfeit not less than \$5,000 nor more than \$7,500,
20 except that, if the person knows at the time of the violation that he or she does not
21 possess a valid operator's license, the person is guilty of a Class I felony.

1 5. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3)
2 (a) and, in the course of the violation, causes the death of another person is required
3 to forfeit not less than \$7,500 nor more than \$10,000, except that, if the person knows
4 at the time of the violation that he or she does not possess a valid operator's license,
5 the person is guilty of a Class H felony.

6 **SECTION 6.** 343.30 (1d) of the statutes is created to read:

7 343.30 (1d) A court shall revoke a person's operating privilege upon the
8 person's conviction for violating s. 343.05 (3) (a) or a local ordinance in conformity
9 therewith if the person, in the course of the violation, causes great bodily harm, as
10 defined in s. 939.22 (14), to another person or the death of another person. Any
11 revocation under this subsection shall be for a period of 6 months, unless the court
12 orders a period of revocation of less than 6 months and places its reasons for ordering
13 the lesser period of revocation on the record.

14 **SECTION 7.** 343.30 (1g) of the statutes is amended to read:

15 343.30 (1g) (a) ~~Except as provided in par.~~ Subject to pars. (b) and (c), a court
16 may suspend a person's operating privilege for any period not exceeding 6 months
17 upon the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local
18 ordinance in conformity therewith.

19 (b) ~~A~~ Except as provided in par. (c), a court shall may revoke a person's
20 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or
21 (d) or a local ordinance in conformity therewith if the person has been convicted of
22 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under
23 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the
24 5-year period preceding the violation. The

1 (d) Any revocation under this subsection shall be for a period of 6 months,
2 unless the court orders a period of revocation of less than 6 months and places its
3 reasons for ordering the lesser period of revocation on the record.

4 **SECTION 8.** 343.30 (1g) (c) of the statutes is created to read:

5 343.30 (1g) (c) A court shall revoke a person's operating privilege upon the
6 person's conviction for violating s. 343.44 (1) (a) or (b), or a local ordinance in
7 conformity with s. 343.44 (1) (a) or (b), if the person, in the course of the violation,
8 causes great bodily harm, as defined in s. 939.22 (14), to another person or the death
9 of another person.

10 **SECTION 9.** 343.30 (2j) (a) of the statutes is amended to read:

11 343.30 (2j) (a) A court may ~~revoke~~ suspend a person's operating privilege upon
12 the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall ~~revoke~~
13 suspend a person's operating privilege upon the person's 2nd or subsequent
14 conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The
15 ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining
16 prior convictions for purposes of this paragraph, the 5-year period shall be measured
17 from the dates of the violations that resulted in the convictions. Each conviction
18 under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s.
19 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be
20 counted as a single conviction.

21 **SECTION 10.** 343.31 (1) (hm) of the statutes is repealed.

22 **SECTION 11.** 343.31 (2m) of the statutes is amended to read:

23 343.31 (2m) The department may suspend or revoke, respectively, the
24 operating privilege of any resident upon receiving notice of the conviction of that
25 person under a law of another jurisdiction or a federally recognized American Indian

1 tribe or band in this state for an offense which, if the person had committed the
2 offense in this state and been convicted of the offense under the laws of this state,
3 would have permitted suspension or revocation of the person's operating privilege
4 under s. 343.30 (1d) or (1g). Upon receiving similar notice with respect to a
5 nonresident, the department may suspend or revoke the privilege of the nonresident
6 to operate a motor vehicle in this state. The suspension or revocation shall not apply
7 to the operation of a commercial motor vehicle by a nonresident who holds a valid
8 commercial driver license issued by another state. A suspension or revocation under
9 this subsection shall be for any period not exceeding 6 months.

10 **SECTION 12.** 343.44 (1) (am) of the statutes is repealed.

11 **SECTION 13.** 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and
12 amended to read:

13 343.44 (2) (ag) 1. Any Except as provided in subds. 2. and 3., any person who
14 violates sub. (1) (a) or a local ordinance in conformity therewith shall be required to
15 forfeit not less than \$50 nor more than \$200.

16 **SECTION 14.** 343.44 (2) (ad) of the statutes is created to read:

17 343.44 (2) (ad) "Great bodily harm" has the meaning given in s. 939.22 (14).

18 **SECTION 15.** 343.44 (2) (ag) 2. and 3. of the statutes are created to read:

19 343.44 (2) (ag) 2. Any person who violates sub. (1) (a) and, in the course of the
20 violation, causes great bodily harm to another person is required to forfeit not less
21 than \$5,000 nor more than \$7,500, except that, if the person knows at the time of the
22 violation that his or her operating privilege has been suspended, the person is guilty
23 of a Class I felony.

24 3. Any person who violates sub. (1) (a) and, in the course of the violation, causes
25 the death of another person is required to forfeit not less than \$7,500 nor more than

1 \$10,000, except that, if the person knows at the time of the violation that his or her
2 operating privilege has been suspended, the person is guilty of a Class H felony.

3 **SECTION 16.** 343.44 (2) (am) of the statutes is repealed.

4 **SECTION 17.** 343.44 (2) (ar) 2. of the statutes is created to read:

5 343.44 (2) (ar) 2. Except as provided in subd. 5., any person who violates sub.
6 (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one year
7 in the county jail or both if the person has been convicted of a previous violation of
8 sub. (1) (b), or of a local ordinance in conformity with sub. (1) (b), within the preceding
9 5-year period.

10 **SECTION 18.** 343.44 (2) (ar) 3. to 5. of the statutes are created to read:

11 343.44 (2) (ar) 3. Except as provided in subd. 5., any person who violates sub.
12 (1) (b) and, in the course of the violation, causes great bodily harm to another person
13 is required to forfeit not less than \$5,000 nor more than \$7,500, except that, if the
14 person knows at the time of the violation that his or her operating privilege has been
15 revoked, the person is guilty of a Class I felony.

16 4. Except as provided in subd. 5., any person who violates sub. (1) (b) and, in
17 the course of the violation, causes the death of another person is required to forfeit
18 not less than \$7,500 nor more than \$10,000, except that, if the person knows at the
19 time of the violation that his or her operating privilege has been revoked, the person
20 is guilty of a Class H felony.

21 5. If a person who violates sub. (1) (b) and, in the course of the violation, causes
22 great bodily harm to another person or the death of another person has been
23 convicted of a previous violation of sub. (1) (b), or of a local ordinance in conformity
24 with sub. (1) (b), within the preceding 5-year period, the person shall be subject to
25 the highest applicable penalty under subds. 2. to 4.

1 **SECTION 19.** 343.44 (2) (as) of the statutes is renumbered 343.44 (2) (ar) 1. and
2 amended to read:

3 343.44 (2) (ar) 1. ~~Any~~ Except as provided in subds. 2. to 5., any person who
4 violates sub. (1) (b) ~~after July 27, 2005,~~ shall forfeit not more than \$2,500, ~~except that,~~
5 ~~if the person has been convicted of a previous violation of sub. (1) (b) within the~~
6 ~~preceding 5-year period or if the revocation identified under sub. (1) (b) resulted from~~
7 ~~an offense that may be counted under s. 343.307 (2), the penalty under par. (b) shall~~
8 ~~apply.~~

9 **SECTION 20.** 343.44 (2) (b) (intro.) of the statutes is amended to read:

10 343.44 (2) (b) (intro.) ~~Except as provided in pars. (am) and (as),~~ any person who
11 violates sub. (1) (b) or (d) shall be ~~fined not more than \$2,500 or imprisoned for not~~
12 ~~more than one year in the county jail or both.~~ In imposing a sentence under this
13 paragraph, ~~or a local ordinance in conformity with this paragraph,~~ par. (ar) 2. to 5.
14 or (br), the court shall review the record and consider the following:

15 **SECTION 21.** 343.44 (2) (br) of the statutes is created to read:

16 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than
17 \$2,500 or imprisoned for not more than one year in the county jail or both.

18 **SECTION 22.** 343.44 (2) (e) to (h) of the statutes are repealed.

19 **SECTION 23. Initial applicability.**

20 (1) This act first applies to violations committed on the effective date of this
21 subsection, but does not preclude the counting of other violations as prior violations
22 for purposes of sentencing a person.

23 **SECTION 24. Effective date.**

Basford, Sarah

From: Moran, Christian
Sent: Friday, October 26, 2007 9:45 AM
To: LRB.Legal
Subject: please jacket LRB-1791/1 for Assembly introduction

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
608-266-1733