

2013 DRAFTING REQUEST

Bill

Received: 2/21/2013 Received By: agary
Wanted: As time permits Same as LRB: -1616
For: Luther Olsen (608) 266-0751 By/Representing: Sarah Archibald
May Contact: Drafter: agary
Subject: Drunk Driving - penalties Addl. Drafters: emueller
Transportation - traffic laws
Extra Copies:

Submit via email: YES
Requester's email: Sen.Olsen@legis.wisconsin.gov
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov
eric.mueller@legis.wisconsin.gov
Sarah.Archibald@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Creating penalty enhancements for traffic violations resulting in harm to vulnerable highway users;
driver education courses

Instructions:

Wants companion to LRB-1616

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 3/8/2013	scalvin 3/8/2013	jfrantze 3/8/2013	_____			
/P1	agary 4/3/2013			_____	mbarman 3/8/2013		State S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required Crime</u>
/1	emueller 8/8/2013	scalvin 8/13/2013	rschluet 8/13/2013	_____	lparisi 4/3/2013	lparisi 4/3/2013	State S&L Crime
/2	agary 8/21/2013			_____	lparisi 8/13/2013	lparisi 8/13/2013	State S&L Crime
/3		kfollett 8/21/2013	jfrantze 8/21/2013	_____	sbasford 8/21/2013	srose 9/17/2013	State S&L Crime

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13 at intro

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/2				_____	lparisi 8/13/2013	lparisi 8/13/2013	State S&L Crime
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1316f
8/21


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1/2 sac
08/12/2013

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12 EJM
8/8/13

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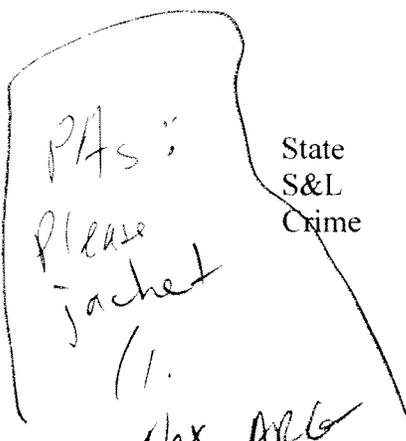
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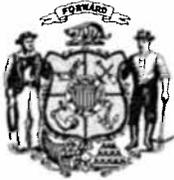
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/?	agary	1/PI sac 03/08/2013					

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State of Wisconsin
2013 - 2014 LEGISLATURE

500h



LRB-~~1016/PA~~ - 1701/PI

ARG&EVM:sac:5

in 3/8

Stays

RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LRB - 1616 submitted yesterday

companion - no changes

1 **AN ACT to renumber and amend** 346.65 (3) and 346.65 (5); **to amend** 343.31
2 (1) (a), 345.47 (1) (intro.), 346.17 (4), 346.22 (1) (a), (b), (c), (d) and (e), 346.22
3 (3), 346.95 (1) and (2), 349.06 (1) (a), 940.25 (1m) (a), 940.25 (1m) (b) and 940.25
4 (2) (a); and **to create** 38.04 (4) (e) 7., 115.28 (11) (g), 340.01 (74p), 343.30 (1m),
5 343.31 (1) (ag), 343.31 (2t) (a) 4., 343.31 (3) (cm), 343.71 (5) (g), 346.17 (6),
6 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6),
7 346.65 (3) (b), 346.65 (5) (b), 346.74 (7), 346.82 (3), 346.95 (12), 939.22 (44m) and
8 940.25 (1b) of the statutes; **relating to:** traffic violations resulting in harm to
9 vulnerable highway users, driver education instruction, and providing a
10 penalty.

Analysis by the Legislative Reference Bureau

This bill creates penalty enhancements for traffic violations that result in bodily harm, great bodily harm, or death (collectively "harm") to vulnerable highway users. The bill defines "vulnerable highway user" as any of the following: 1) a pedestrian; 2) a bicyclist; 3) an operator of a motorcycle, moped, or motor bicycle; 4) an operator of, or passenger on, an animal-drawn vehicle, farm tractor, farm truck tractor, farm trailer, or implement of husbandry; 5) a person riding upon in-line

skates, a horse, or a play vehicle; 6) a law enforcement officer, traffic officer, fire fighter, or emergency medical technician, while performing his or her official duties; or 7) a person who is rendering medical or emergency assistance to another person. For most traffic violations, the bill doubles the applicable forfeiture or fine if the violation results in harm to a vulnerable highway user, and this doubling is in addition to any other applicable penalty enhancement, such as the doubling for certain traffic violations committed in highway maintenance or construction areas or in utility work areas. However, for specific violations, the bill makes the offense a Class I or Class H felony if the violation results in harm to a vulnerable highway user. A Class I felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding three years and six months or both. A Class H felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding six years or both. Provisions of current law that increase the forfeiture or fine for violations committed under certain circumstances, such as in highway maintenance or construction areas or in utility work areas, continue to apply to these new, higher penalties.

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant is guilty of a Class D felony or, if the person has been convicted of a prior operating under the influence of an intoxicant or other drug (OWI) offense relating to, a Class C felony. A Class C felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 40 years or both. A Class D felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 25 years or both. A person who causes great bodily harm to another by OWI is guilty of a Class F felony. A Class F felony is punishable by a fine not exceeding \$25,000 or imprisonment not exceeding 12 years and 6 months or both. A person who causes injury to another by OWI may be fined not less than \$300 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year or, if the person has been convicted of a prior OWI-related offense, is guilty of a Class H felony.

Under this bill, a person who causes bodily harm by OWI to a vulnerable highway user is guilty of a Class H felony.

Under current law, the operator of a vehicle must yield the right-of-way to another vehicle under certain circumstances, including: when turning left across traffic; at an intersection posted with a yield sign; when entering a through highway or a highway from an alley or driveway or from a parked or standing position; or when entering a highway from another highway that ends at a "T" intersection. A person who fails to yield the right-of-way as required is subject to a forfeiture of not less than \$20 nor more than \$50 for a first offense and not less than \$50 nor more than \$100 for any subsequent offense within a year. However, if the violation results in bodily harm, great bodily harm, or death to another, the person must forfeit, respectively, \$200, \$500, or \$1,000 for the violation and the Department of Transportation (DOT) must suspend the person's operating privilege for, respectively, 2 months, 3 months or 9 months.

Under this bill, if such a failure to yield violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony, punishable by a fine not

exceeding \$10,000 or imprisonment not exceeding three years and six months or both, and DOT must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle must yield the right-of-way to livestock being driven over or along the highway. A person who fails to yield the right-of-way to livestock is subject to a forfeiture of not less than \$10 nor more than \$20 for the first offense and not less than \$25 nor more than \$50 for the second or subsequent offense within a year.

Under this bill, if such a failure to yield to livestock violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle overtaking a bicycle proceeding in the same direction must exercise due care, leaving a safe distance but at least three feet clearance when passing the bicycle, and must maintain clearance until safely past the overtaken bicycle. Also, if the operator of a motor vehicle overtakes a motor bus that is stopped at an intersection on the right side of the roadway and that is receiving or discharging passengers, the operator must pass at a safe distance to the left of the motor bus and may not turn to the right in front of the motor bus at that intersection. A person who commits such a passing violation is subject to a forfeiture of not less than \$25 nor more than \$200 for the first offense and not less than \$50 nor more than \$500 for the second or subsequent offense within four years.

Under this bill, if such a passing violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits inattentive driving of a motor vehicle, which includes: 1) being so engaged or occupied, while driving a motor vehicle, as to interfere with the safe driving of the vehicle; 2) operating a motor vehicle equipped with a television or similar device in the front of the vehicle or otherwise visible to the operator; and 3) driving a motor vehicle while composing or sending an electronic text message or an e-mail message; and 4) driving a motor vehicle while using a cellular or wireless telephone, if the driver holds a probationary license or instruction permit. Any person who commits form 1) or 3) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$400 and any person who commits form 2) or 4) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent offense within a year.

Under this bill, if any inattentive driving violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits a person from causing bodily harm or great bodily harm to another by the negligent operation of a vehicle (reckless driving). A person who commits a reckless driving violation that causes bodily harm is subject to a fine of not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year. A person who commits a reckless driving violation that

causes great bodily harm is guilty of a Class I felony and must have his or her operating privilege revoked by DOT for one year.

Under this bill, a reckless driving violation that causes harm or great bodily harm to a vulnerable highway user is punishable as a Class H felony and the violator must have his or her operating privilege revoked by DOT for a period of two years.

Under current law, local authorities may enact and enforce traffic regulations that are in strict conformity with state statutes and that provide for a forfeiture as a penalty.

Under this bill, if a local authority enacts a traffic regulation in strict conformity with a state statute and the statutory penalty is doubled if the violation results in harm to a vulnerable highway user, the applicable ordinance penalty for the ordinance violation must also include the doubling of the forfeiture.

Under current law, the Department of Public Instruction (DPI) must approve driver education courses offered by school districts, county children with disabilities education boards, and technical college districts. DPI must also establish minimum standards for driver education courses offered by private driver schools. DPI may not approve a driver education course or establish driver education course standards unless the course or standards include certain content, such as acquainting students with the hazards posed by farm machinery and animals on highways and by railroad grade crossings and providing instruction in safely dealing with these hazards.

Under current law, the Technical College System Board (TCSB) must approve courses of study for each program offered in technical college district schools, including driver education courses. TCSB may not approve a driver education course unless the course includes certain content, such as acquainting students with the hazards posed by farm machinery and animals on highways and by railroad grade crossings and providing instruction in safely dealing with these hazards. DOT licenses private driver schools and DOT may not license a driver school unless its course of instruction includes the content required for TCSB approval of a driver education course.

Under this bill, all approved driver education courses must acquaint each student with the hazards posed by motor vehicles to vulnerable highway users and provide at least 30 minutes of instruction in safely dealing with these hazards.

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 and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 38.04 (4) (e) 7. of the statutes is created to read:

1 38.04 (4) (e) 7. Acquaints each student with the hazards posed by motor
2 vehicles to vulnerable highway users, as defined in s. 340.01 (74p), and provides at
3 least 30 minutes of instruction in safely dealing with these hazards.

4 **SECTION 2.** 115.28 (11) (g) of the statutes is created to read:

5 115.28 (11) (g) Acquaint each student with the hazards posed by motor vehicles
6 to vulnerable highway users, as defined in s. 340.01 (74p), and provide at least 30
7 minutes of instruction in safely dealing with these hazards.

8 **SECTION 3.** 340.01 (74p) of the statutes is created to read:

9 340.01 (74p) “Vulnerable highway user” means any of the following:

10 (a) A pedestrian.

11 (b) A bicyclist.

12 (c) An operator of a motorcycle, moped, or motor bicycle.

13 (d) An operator of, or passenger on, an animal-drawn vehicle, farm tractor,
14 farm truck tractor, farm trailer, or implement of husbandry.

15 (e) A person riding upon in-line skates, a horse, or a play vehicle.

16 (f) A law enforcement officer, traffic officer, fire fighter, or emergency medical
17 technician, while performing his or her official duties.

18 (g) A person who is rendering medical or emergency assistance to another
19 person.

20 **SECTION 4.** 343.30 (1m) of the statutes is created to read:

21 343.30 (1m) Upon conviction of a person for violating s. 346.075, 346.21, or
22 346.89, the court shall suspend the violator’s operating privilege for a period of one
23 year if the offense resulted in bodily harm, great bodily harm, or death to a
24 vulnerable highway user.

25 **SECTION 5.** 343.31 (1) (a) of the statutes is amended to read:

SECTION 5

1 343.31 (1) (a) Homicide ~~or~~, great bodily harm, or harm to a vulnerable highway
2 user resulting from the operation of a motor vehicle and which is criminal under s.
3 346.62 (4), 940.06, 940.09, 940.10 or 940.25.

4 **SECTION 6.** 343.31 (1) (ag) of the statutes is created to read:

5 343.31 (1) (ag) Bodily harm to a vulnerable highway user resulting from the
6 operation of a motor vehicle and which is criminal under s. 346.62 (3).

7 **SECTION 7.** 343.31 (2t) (a) 4. of the statutes is created to read:

8 343.31 (2t) (a) 4. Notwithstanding subs. 1. to 3., for a period of one year, if the
9 offense resulted in bodily harm, great bodily harm, or death to a vulnerable highway
10 user.

11 **SECTION 8.** 343.31 (3) (cm) of the statutes is created to read:

12 343.31 (3) (cm) Any person convicted under s. 346.62 (3) or (4) or 940.10, or
13 under s. 940.06 if the offense resulted from the operation of a motor vehicle, shall
14 have his or her operating privilege revoked for 2 years if the offense resulted in bodily
15 harm, great bodily harm, or death to a vulnerable highway user.

16 **SECTION 9.** 343.71 (5) (g) of the statutes is created to read:

17 343.71 (5) (g) Acquaints each student with the hazards posed by motor vehicles
18 to vulnerable highway users, as defined in s. 340.01 (74p), and provides at least 30
19 minutes of instruction in safely dealing with these hazards.

20 **SECTION 10.** 345.47 (1) (intro.) of the statutes is amended to read:

21 345.47 (1) (intro.) If the defendant is found guilty, the court may enter
22 judgment against the defendant for a monetary amount not to exceed the maximum
23 forfeiture provided for the violation, plus costs, fees, and surcharges imposed under
24 ch. 814, and, in addition, may suspend or revoke his or her operating privilege under
25 s. 343.30. If the violation is one described in s. 346.17 (6) (c), 346.22 (5) (c), 346.65

1 (3) (b) or (5) (b), or 346.95 (12) (c), or if the forfeiture for the violation has been doubled
2 under s. 346.17 (6), 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56
3 (5), 346.60 (6), 346.74 (7), 346.82 (3), 346.95 (12), or 349.06 (1) (a), the court may also
4 order the defendant to perform community service work. Upon entering judgment,
5 the court shall notify the defendant personally, if the defendant is present, and in
6 writing that the defendant should notify the court if he or she is unable to pay the
7 judgment because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant
8 is present and the court, using the criteria in s. 814.29 (1) (d), determines that the
9 defendant is unable to pay the judgment because of poverty, the court shall provide
10 the defendant with an opportunity to pay the judgment in installments, taking into
11 account the defendant's income. If the judgment is not paid or if the defendant fails
12 to make any ordered installment payment, the court shall order:

13 **SECTION 11.** 346.17 (4) of the statutes is amended to read:

14 346.17 (4) Any Except as provided in sub. (6) (c), any person violating s. 346.075
15 may be required to forfeit not less than \$25 nor more than \$200 for the first offense
16 and not less than \$50 nor more than \$500 for the 2nd or subsequent violation within
17 4 years.

18 **SECTION 12.** 346.17 (6) of the statutes is created to read:

19 346.17 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.
20 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

21 (b) If any violation under ss. 346.04 to 346.072 or 346.08 to 346.16 results in
22 harm to a vulnerable highway user, the amount of any forfeiture or fine specified in
23 subs. (1) to (3) or s. 939.50 for the violation shall be doubled. If sub. (5) applies with
24 respect to the violation, the doubling of the forfeiture under this subsection shall
25 apply in addition to any doubling under sub. (5).

SECTION 12

1 (c) If any violation under s. 346.075 results in harm to a vulnerable highway
2 user, the person who commits the violation is guilty of a Class I felony.

3 **SECTION 13.** 346.22 (1) (a), (b), (c), (d) and (e) of the statutes are amended to
4 read:

5 346.22 (1) (a) Except as provided in par. (b), (c), (d), or (e) or sub. (5) (c), any
6 person violating s. 346.18, 346.20 (1), or 346.215 (2) (b) or (3) may be required to
7 forfeit not less than \$20 nor more than \$50 for the first offense and not less than \$50
8 nor more than \$100 for the 2nd or subsequent conviction within a year.

9 (b) If an operator of a vehicle violates s. 346.18 (6) where persons engaged in
10 work in a highway maintenance or construction area or in a utility work area are at
11 risk from traffic, any applicable minimum and maximum forfeiture or fine specified
12 in par. (a), (c), (d), or (e) or sub. (5) (c) and s. 939.50 for the violation shall be doubled.

13 (c) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the
14 violation results in bodily harm, as defined in s. 939.22 (4), to another, the person
15 shall forfeit \$200.

16 (d) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the
17 violation results in great bodily harm, as defined in s. 939.22 (14), to another, the
18 person shall forfeit \$500.

19 (e) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the
20 violation results in death to another, the person shall forfeit \$1,000.

21 **SECTION 14.** 346.22 (3) of the statutes is amended to read:

22 346.22 (3) ~~Any~~ Except as provided in sub. (5) (c), any person violating s. 346.20
23 (2), (3) or (4) (b) or (c) or 346.21 may be required to forfeit not less than \$10 nor more
24 than \$20 for the first offense and not less than \$25 nor more than \$50 for the 2nd or
25 subsequent conviction within a year.

1 **SECTION 15.** 346.22 (5) of the statutes is created to read:

2 346.22 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.
3 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

4 (b) If any violation under s. 346.19, 346.20, or 346.215 results in harm to a
5 vulnerable highway user, the amount of any forfeiture specified in subs. (1) to (3) for
6 the violation shall be doubled. If sub. (1) (b) applies with respect to the violation, the
7 doubling of the forfeiture under this subsection shall apply in addition to any
8 doubling under sub. (1) (b).

9 (c) If any violation under s. 346.18 or 346.21 results in harm to a vulnerable
10 highway user, the person who commits the violation is guilty of a Class I felony.

11 **SECTION 16.** 346.30 (5) of the statutes is created to read:

12 346.30 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.
13 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

14 (b) If any violation under ss. 346.23 to 346.29 results in harm to a vulnerable
15 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation
16 shall be doubled.

17 **SECTION 17.** 346.36 (3) of the statutes is created to read:

18 346.36 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.
19 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

20 (b) If any violation under ss. 346.31 to 346.35 results in harm to a vulnerable
21 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the
22 violation shall be doubled.

23 **SECTION 18.** 346.43 (4) of the statutes is created to read:

24 346.43 (4) (a) In this subsection, "harm" means bodily harm, as defined in s.
25 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

1 (b) If any violation under ss. 346.37 to 346.42 results in harm to a vulnerable
2 highway user, the amount of any forfeiture specified in subs. (1) to (3) for the violation
3 shall be doubled. If sub. (1) (b) 3. applies with respect to the violation, the doubling
4 of the forfeiture under this subsection shall apply in addition to any doubling under
5 sub. (1) (b) 3.

6 **SECTION 19.** 346.49 (5) of the statutes is created to read:

7 346.49 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.
8 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

9 (b) If any violation under s. 346.44, 346.45, 346.455, 346.46, or 346.47 to 346.48
10 results in harm to a vulnerable highway user, the amount of any forfeiture specified
11 in subs. (1), (1g), (2), (2m), and (4) for the violation shall be doubled. If sub. (1) (c)
12 applies with respect to the violation, the doubling of the forfeiture under this
13 subsection shall apply in addition to any doubling under sub. (1) (c).

14 **SECTION 20.** 346.56 (5) of the statutes is created to read:

15 346.56 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.
16 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

17 (b) If any violation under ss. 346.503 to 346.55 results in harm to a vulnerable
18 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation
19 shall be doubled.

20 **SECTION 21.** 346.60 (6) of the statutes is created to read:

21 346.60 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.
22 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

23 (b) If any violation under ss. 346.57 to 346.595 results in harm to a vulnerable
24 highway user, the amount of any forfeiture specified in subs. (1) to (5) for the violation
25 shall be doubled. If sub. (3m) applies with respect to the violation, the doubling of

1 the forfeiture under this subsection shall apply in addition to any doubling or other
2 penalty enhancement under sub. (3m).

3 **SECTION 22.** 346.65 (3) of the statutes is renumbered 346.65 (3) (a) and
4 amended to read:

5 346.65 (3) (a) Except as provided in par. (b) and sub. (5m), any person violating
6 s. 346.62 (3) shall be fined not less than \$300 nor more than \$2,000 and may be
7 imprisoned for not less than 30 days nor more than one year in the county jail.

8 **SECTION 23.** 346.65 (3) (b) of the statutes is created to read:

9 346.65 (3) (b) If the violation of s. 346.62 (3) causes bodily harm to a vulnerable
10 highway user, the person who commits the violation is guilty of a Class H felony.

11 **SECTION 24.** 346.65 (5) of the statutes is renumbered 346.65 (5) (a) and
12 amended to read:

13 346.65 (5) (a) Except as provided in par. (b) and sub. (5m), any person violating
14 s. 346.62 (4) is guilty of a Class I felony.

15 **SECTION 25.** 346.65 (5) (b) of the statutes is created to read:

16 346.65 (5) (b) If the violation of s. 346.62 (4) causes great bodily harm to a
17 vulnerable highway user, the person who commits the violation is guilty of a Class
18 H felony.

19 **SECTION 26.** 346.74 (7) of the statutes is created to read:

20 346.74 (7) (a) In this subsection, “harm” means bodily harm, as defined in s.
21 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

22 (b) If any violation under s. 346.67 or ss. 346.68 to 346.70 results in harm to
23 a vulnerable highway user, the amount of any forfeiture or fine specified in subs. (2)
24 to (5) or s. 939.50 for the violation shall be doubled.

25 **SECTION 27.** 346.82 (3) of the statutes is created to read:

1 346.82 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.
2 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

3 (b) If any violation under ss. 346.77 to 346.805 results in harm to a vulnerable
4 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the
5 violation shall be doubled.

6 **SECTION 28.** 346.95 (1) and (2) of the statutes are amended to read:

7 346.95 (1) Any Except as provided in sub. (12) (c), any person violating s.
8 346.87, 346.88, 346.89 (2) or (4), 346.90 to 346.92 or 346.94 (1), (9), (10), (11), (12) or
9 (15) may be required to forfeit not less than \$20 nor more than \$40 for the first offense
10 and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within
11 a year.

12 (2) Any Except as provided in sub. (12) (c), any person violating s. 346.89 (1)
13 or (3) (a) or 346.94 (2), (4), or (7) may be required to forfeit not less than \$20 nor more
14 than \$400.

15 **SECTION 29.** 346.95 (12) of the statutes is created to read:

16 346.95 (12) (a) In this subsection, "harm" means bodily harm, as defined in s.
17 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

18 (b) If any violation under ss. 346.87, 346.88, or 346.90 to 346.94 results in harm
19 to a vulnerable highway user, the amount of any forfeiture specified in subs. (1) to
20 (5e) and (6) to (11) for the violation shall be doubled.

21 (c) If any violation under s. 346.89 results in harm to a vulnerable highway
22 user, the person who commits the violation is guilty of a Class I felony.

23 **SECTION 30.** 349.06 (1) (a) of the statutes is amended to read:

24 349.06 (1) (a) Except for the suspension or revocation of motor vehicle
25 operator's licenses or except as provided in par. (b), any local authority may enact and

1 enforce any traffic regulation which is in strict conformity with one or more
2 provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a
3 forfeiture. If a local authority enacts a traffic regulation in strict conformity with any
4 provision of ch. 346 for which the penalty under ch. 346 is doubled if the violation
5 results in harm to a vulnerable highway user, the applicable penalty for the violation
6 under the ordinance shall also include the doubling of the forfeiture.

7 **SECTION 31.** 939.22 (44m) of the statutes is created to read:

8 939.22 (**44m**) “Vulnerable highway user” has the meaning given in s. 340.01
9 (74p).

10 **SECTION 32.** 940.25 (1b) of the statutes is created to read:

11 940.25 (**1b**) Any person who does any of the following is guilty of a Class H
12 felony:

13 (a) Causes bodily harm to a vulnerable highway user by the operation of a
14 vehicle while under the influence of an intoxicant.

15 (b) Causes bodily harm to a vulnerable highway user by the operation of a
16 vehicle while the person has a detectable amount of a restricted controlled substance
17 in his or her blood.

18 (c) Causes bodily harm to a vulnerable highway user by the operation of a
19 vehicle while the person has a prohibited alcohol concentration, as defined in s.
20 340.01 (46m).

21 (d) Causes bodily harm to a vulnerable highway user by the operation of a
22 commercial motor vehicle while the person has an alcohol concentration of 0.04 or
23 more but less than 0.08.

24 **SECTION 33.** 940.25 (1m) (a) of the statutes is amended to read:

SECTION 33

1 940.25 (1m) (a) A person may be charged with and a prosecutor may proceed
2 upon an information based upon a violation of any combination of sub. (1) (a), (am),
3 or (b); any combination of sub. (1) (a), (am), or (bm); any combination of sub. (1) (c),
4 (cm), or (d); ~~or any combination of sub. (1) (c), (cm), or (e); any combination of sub. (1b)~~
5 (a), (b), or (c); or any combination of sub. (1b) (a), (b), or (d) for acts arising out of the
6 same incident or occurrence.

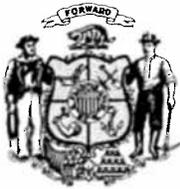
7 **SECTION 34.** 940.25 (1m) (b) of the statutes is amended to read:

8 940.25 (1m) (b) If a person is charged in an information with any of the
9 combinations of crimes referred to in par. (a), the crimes shall be joined under s.
10 971.12. If the person is found guilty of more than one of the crimes so charged for
11 acts arising out of the same incident or occurrence, there shall be a single conviction
12 for purposes of sentencing and for purposes of counting convictions under s. 23.33
13 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or
14 under s. 350.11 (3) (a) 2. and 3. ~~Subsection~~ Subsections (1) (a), (am), (b), (bm), (c),
15 (cm), (d), and (e) and (1b) (a), (b), (c), and (d) each require proof of a fact for conviction
16 which the others do not require.

17 **SECTION 35.** 940.25 (2) (a) of the statutes is amended to read:

18 940.25 (2) (a) The defendant has a defense if he or she proves by a
19 preponderance of the evidence that the great bodily harm or bodily harm would have
20 occurred even if he or she had been exercising due care and he or she had not been
21 under the influence of an intoxicant, did not have a detectable amount of a restricted
22 controlled substance in his or her blood, or did not have an alcohol concentration
23 described under sub. (1) (b), (bm), (d) or (e) or (1b) (c) or (d).

24 **SECTION 36. Initial applicability.**



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1701/1
ARG&EVM:sac:jt
stays

in
4/3
wanted
by 4/5

AMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

4/3 H. v. Sarah - wants 11, jacketed

No changes

gen act

1 **AN ACT** *to renumber and amend* 346.65 (3) and 346.65 (5); *to amend* 343.31

2 (1) (a), 345.47 (1) (intro.), 346.17 (4), 346.22 (1) (a), (b), (c), (d) and (e), 346.22

3 (3), 346.95 (1) and (2), 349.06 (1) (a), 940.25 (1m) (a), 940.25 (1m) (b) and 940.25

4 (2) (a); and **to create** 38.04 (4) (e) 7., 115.28 (11) (g), 340.01 (74p), 343.30 (1m),

5 343.31 (1) (ag), 343.31 (2t) (a) 4., 343.31 (3) (cm), 343.71 (5) (g), 346.17 (6),

6 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6),

7 346.65 (3) (b), 346.65 (5) (b), 346.74 (7), 346.82 (3), 346.95 (12), 939.22 (44m) and

8 940.25 (1b) of the statutes; **relating to:** traffic violations resulting in harm to

9 vulnerable highway users, driver education instruction, and providing a

10 penalty.

Analysis by the Legislative Reference Bureau

This bill creates penalty enhancements for traffic violations that result in bodily harm, great bodily harm, or death (collectively "harm") to vulnerable highway users. The bill defines "vulnerable highway user" as any of the following: 1) a pedestrian; 2) a bicyclist; 3) an operator of a motorcycle, moped, or motor bicycle; 4) an operator of, or passenger on, an animal-drawn vehicle, farm tractor, farm truck tractor, farm trailer, or implement of husbandry; 5) a person riding upon in-line

skates, a horse, or a play vehicle; 6) a law enforcement officer, traffic officer, fire fighter, or emergency medical technician, while performing his or her official duties; or 7) a person who is rendering medical or emergency assistance to another person. For most traffic violations, the bill doubles the applicable forfeiture or fine if the violation results in harm to a vulnerable highway user, and this doubling is in addition to any other applicable penalty enhancement, such as the doubling for certain traffic violations committed in highway maintenance or construction areas or in utility work areas. However, for specific violations, the bill makes the offense a Class I or Class H felony if the violation results in harm to a vulnerable highway user. A Class I felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding three years and six months or both. A Class H felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding six years or both. Provisions of current law that increase the forfeiture or fine for violations committed under certain circumstances, such as in highway maintenance or construction areas or in utility work areas, continue to apply to these new, higher penalties.

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant is guilty of a Class D felony or, if the person has been convicted of a prior operating under the influence of an intoxicant or other drug (OWI) offense relating to, a Class C felony. A Class C felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 40 years or both. A Class D felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 25 years or both. A person who causes great bodily harm to another by OWI is guilty of a Class F felony. A Class F felony is punishable by a fine not exceeding \$25,000 or imprisonment not exceeding 12 years and 6 months or both. A person who causes injury to another by OWI may be fined not less than \$300 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year or, if the person has been convicted of a prior OWI-related offense, is guilty of a Class H felony.

Under this bill, a person who causes bodily harm by OWI to a vulnerable highway user is guilty of a Class H felony.

Under current law, the operator of a vehicle must yield the right-of-way to another vehicle under certain circumstances, including: when turning left across traffic; at an intersection posted with a yield sign; when entering a through highway or a highway from an alley or driveway or from a parked or standing position; or when entering a highway from another highway that ends at a "T" intersection. A person who fails to yield the right-of-way as required is subject to a forfeiture of not less than \$20 nor more than \$50 for a first offense and not less than \$50 nor more than \$100 for any subsequent offense within a year. However, if the violation results in bodily harm, great bodily harm, or death to another, the person must forfeit, respectively, \$200, \$500, or \$1,000 for the violation and the Department of Transportation (DOT) must suspend the person's operating privilege for, respectively, 2 months, 3 months or 9 months.

Under this bill, if such a failure to yield violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony, punishable by a fine not

exceeding \$10,000 or imprisonment not exceeding three years and six months or both, and DOT must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle must yield the right-of-way to livestock being driven over or along the highway. A person who fails to yield the right-of-way to livestock is subject to a forfeiture of not less than \$10 nor more than \$20 for the first offense and not less than \$25 nor more than \$50 for the second or subsequent offense within a year.

Under this bill, if such a failure to yield to livestock violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle overtaking a bicycle proceeding in the same direction must exercise due care, leaving a safe distance but at least three feet clearance when passing the bicycle, and must maintain clearance until safely past the overtaken bicycle. Also, if the operator of a motor vehicle overtakes a motor bus that is stopped at an intersection on the right side of the roadway and that is receiving or discharging passengers, the operator must pass at a safe distance to the left of the motor bus and may not turn to the right in front of the motor bus at that intersection. A person who commits such a passing violation is subject to a forfeiture of not less than \$25 nor more than \$200 for the first offense and not less than \$50 nor more than \$500 for the second or subsequent offense within four years.

Under this bill, if such a passing violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits inattentive driving of a motor vehicle, which includes: 1) being so engaged or occupied, while driving a motor vehicle, as to interfere with the safe driving of the vehicle; 2) operating a motor vehicle equipped with a television or similar device in the front of the vehicle or otherwise visible to the operator; and 3) driving a motor vehicle while composing or sending an electronic text message or an e-mail message; and 4) driving a motor vehicle while using a cellular or wireless telephone, if the driver holds a probationary license or instruction permit. Any person who commits form 1) or 3) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$400 and any person who commits form 2) or 4) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent offense within a year.

Under this bill, if any inattentive driving violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits a person from causing bodily harm or great bodily harm to another by the negligent operation of a vehicle (reckless driving). A person who commits a reckless driving violation that causes bodily harm is subject to a fine of not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year. A person who commits a reckless driving violation that

causes great bodily harm is guilty of a Class I felony and must have his or her operating privilege revoked by DOT for one year.

Under this bill, a reckless driving violation that causes harm or great bodily harm to a vulnerable highway user is punishable as a Class H felony and the violator must have his or her operating privilege revoked by DOT for a period of two years.

Under current law, local authorities may enact and enforce traffic regulations that are in strict conformity with state statutes and that provide for a forfeiture as a penalty.

Under this bill, if a local authority enacts a traffic regulation in strict conformity with a state statute and the statutory penalty is doubled if the violation results in harm to a vulnerable highway user, the applicable ordinance penalty for the ordinance violation must also include the doubling of the forfeiture.

Under current law, the Department of Public Instruction (DPI) must approve driver education courses offered by school districts, county children with disabilities education boards, and technical college districts. DPI must also establish minimum standards for driver education courses offered by private driver schools. DPI may not approve a driver education course or establish driver education course standards unless the course or standards include certain content, such as acquainting students with the hazards posed by farm machinery and animals on highways and by railroad grade crossings and providing instruction in safely dealing with these hazards.

Under current law, the Technical College System Board (TCSB) must approve courses of study for each program offered in technical college district schools, including driver education courses. TCSB may not approve a driver education course unless the course includes certain content, such as acquainting students with the hazards posed by farm machinery and animals on highways and by railroad grade crossings and providing instruction in safely dealing with these hazards. DOT licenses private driver schools and DOT may not license a driver school unless its course of instruction includes the content required for TCSB approval of a driver education course.

Under this bill, all approved driver education courses must acquaint each student with the hazards posed by motor vehicles to vulnerable highway users and provide at least 30 minutes of instruction in safely dealing with these hazards.

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 and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 38.04 (4) (e) 7. Acquaints each student with the hazards posed by motor
2 vehicles to vulnerable highway users, as defined in s. 340.01 (74p), and provides at
3 least 30 minutes of instruction in safely dealing with these hazards.

4 **SECTION 2.** 115.28 (11) (g) of the statutes is created to read:

5 115.28 (11) (g) Acquaint each student with the hazards posed by motor vehicles
6 to vulnerable highway users, as defined in s. 340.01 (74p), and provide at least 30
7 minutes of instruction in safely dealing with these hazards.

8 **SECTION 3.** 340.01 (74p) of the statutes is created to read:

9 340.01 (74p) "Vulnerable highway user" means any of the following:

10 (a) A pedestrian.

11 (b) A bicyclist.

12 (c) An operator of a motorcycle, moped, or motor bicycle.

13 (d) An operator of, or passenger on, an animal-drawn vehicle, farm tractor,
14 farm truck tractor, farm trailer, or implement of husbandry.

15 (e) A person riding upon in-line skates, a horse, or a play vehicle.

16 (f) A law enforcement officer, traffic officer, fire fighter, or emergency medical
17 technician, while performing his or her official duties.

18 (g) A person who is rendering medical or emergency assistance to another
19 person.

20 **SECTION 4.** 343.30 (1m) of the statutes is created to read:

21 343.30 (1m) Upon conviction of a person for violating s. 346.075, 346.21, or
22 346.89, the court shall suspend the violator's operating privilege for a period of one
23 year if the offense resulted in bodily harm, great bodily harm, or death to a
24 vulnerable highway user.

25 **SECTION 5.** 343.31 (1) (a) of the statutes is amended to read:

1 343.31 (1) (a) Homicide ~~or~~, great bodily harm, or harm to a vulnerable highway
2 user resulting from the operation of a motor vehicle and which is criminal under s.
3 346.62 (4), 940.06, 940.09, 940.10 or 940.25.

4 **SECTION 6.** 343.31 (1) (ag) of the statutes is created to read:

5 343.31 (1) (ag) Bodily harm to a vulnerable highway user resulting from the
6 operation of a motor vehicle and which is criminal under s. 346.62 (3).

7 **SECTION 7.** 343.31 (2t) (a) 4. of the statutes is created to read:

8 343.31 (2t) (a) 4. Notwithstanding subds. 1. to 3., for a period of one year, if the
9 offense resulted in bodily harm, great bodily harm, or death to a vulnerable highway
10 user.

11 **SECTION 8.** 343.31 (3) (cm) of the statutes is created to read:

12 343.31 (3) (cm) Any person convicted under s. 346.62 (3) or (4) or 940.10, or
13 under s. 940.06 if the offense resulted from the operation of a motor vehicle, shall
14 have his or her operating privilege revoked for 2 years if the offense resulted in bodily
15 harm, great bodily harm, or death to a vulnerable highway user.

16 **SECTION 9.** 343.71 (5) (g) of the statutes is created to read:

17 343.71 (5) (g) Acquaints each student with the hazards posed by motor vehicles
18 to vulnerable highway users, as defined in s. 340.01 (74p), and provides at least 30
19 minutes of instruction in safely dealing with these hazards.

20 **SECTION 10.** 345.47 (1) (intro.) of the statutes is amended to read:

21 345.47 (1) (intro.) If the defendant is found guilty, the court may enter
22 judgment against the defendant for a monetary amount not to exceed the maximum
23 forfeiture provided for the violation, plus costs, fees, and surcharges imposed under
24 ch. 814, and, in addition, may suspend or revoke his or her operating privilege under
25 s. 343.30. If the violation is one described in s. 346.17 (6) (c), 346.22 (5) (c), 346.65

1 (3) (b) or (5) (b), or 346.95 (12) (c), or if the forfeiture for the violation has been doubled
2 under s. 346.17 (6), 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56
3 (5), 346.60 (6), 346.74 (7), 346.82 (3), 346.95 (12), or 349.06 (1) (a), the court may also
4 order the defendant to perform community service work. Upon entering judgment,
5 the court shall notify the defendant personally, if the defendant is present, and in
6 writing that the defendant should notify the court if he or she is unable to pay the
7 judgment because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant
8 is present and the court, using the criteria in s. 814.29 (1) (d), determines that the
9 defendant is unable to pay the judgment because of poverty, the court shall provide
10 the defendant with an opportunity to pay the judgment in installments, taking into
11 account the defendant's income. If the judgment is not paid or if the defendant fails
12 to make any ordered installment payment, the court shall order:

13 **SECTION 11.** 346.17 (4) of the statutes is amended to read:

14 346.17 (4) ~~Any~~ Except as provided in sub. (6) (c), any person violating s. 346.075
15 may be required to forfeit not less than \$25 nor more than \$200 for the first offense
16 and not less than \$50 nor more than \$500 for the 2nd or subsequent violation within
17 4 years.

18 **SECTION 12.** 346.17 (6) of the statutes is created to read:

19 346.17 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.
20 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

21 (b) If any violation under ss. 346.04 to 346.072 or 346.08 to 346.16 results in
22 harm to a vulnerable highway user, the amount of any forfeiture or fine specified in
23 subs. (1) to (3) or s. 939.50 for the violation shall be doubled. If sub. (5) applies with
24 respect to the violation, the doubling of the forfeiture under this subsection shall
25 apply in addition to any doubling under sub. (5).

1 (c) If any violation under s. 346.075 results in harm to a vulnerable highway
2 user, the person who commits the violation is guilty of a Class I felony.

3 **SECTION 13.** 346.22 (1) (a), (b), (c), (d) and (e) of the statutes are amended to
4 read:

5 346.22 (1) (a) Except as provided in par. (b), (c), (d), or (e) or sub. (5) (c), any
6 person violating s. 346.18, 346.20 (1), or 346.215 (2) (b) or (3) may be required to
7 forfeit not less than \$20 nor more than \$50 for the first offense and not less than \$50
8 nor more than \$100 for the 2nd or subsequent conviction within a year.

9 (b) If an operator of a vehicle violates s. 346.18 (6) where persons engaged in
10 work in a highway maintenance or construction area or in a utility work area are at
11 risk from traffic, any applicable minimum and maximum forfeiture or fine specified
12 in par. (a), (c), (d), or (e) or sub. (5) (c) and s. 939.50 for the violation shall be doubled.

13 (c) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the
14 violation results in bodily harm, as defined in s. 939.22 (4), to another, the person
15 shall forfeit \$200.

16 (d) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the
17 violation results in great bodily harm, as defined in s. 939.22 (14), to another, the
18 person shall forfeit \$500.

19 (e) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the
20 violation results in death to another, the person shall forfeit \$1,000.

21 **SECTION 14.** 346.22 (3) of the statutes is amended to read:

22 346.22 (3) Any Except as provided in sub. (5) (c), any person violating s. 346.20
23 (2), (3) or (4) (b) or (c) or 346.21 may be required to forfeit not less than \$10 nor more
24 than \$20 for the first offense and not less than \$25 nor more than \$50 for the 2nd or
25 subsequent conviction within a year.

1 **SECTION 15.** 346.22 (5) of the statutes is created to read:

2 346.22 (5) (a) In this subsection, “harm” means bodily harm, as defined in s.
3 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

4 (b) If any violation under s. 346.19, 346.20, or 346.215 results in harm to a
5 vulnerable highway user, the amount of any forfeiture specified in subs. (1) to (3) for
6 the violation shall be doubled. If sub. (1) (b) applies with respect to the violation, the
7 doubling of the forfeiture under this subsection shall apply in addition to any
8 doubling under sub. (1) (b).

9 (c) If any violation under s. 346.18 or 346.21 results in harm to a vulnerable
10 highway user, the person who commits the violation is guilty of a Class I felony.

11 **SECTION 16.** 346.30 (5) of the statutes is created to read:

12 346.30 (5) (a) In this subsection, “harm” means bodily harm, as defined in s.
13 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

14 (b) If any violation under ss. 346.23 to 346.29 results in harm to a vulnerable
15 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation
16 shall be doubled.

17 **SECTION 17.** 346.36 (3) of the statutes is created to read:

18 346.36 (3) (a) In this subsection, “harm” means bodily harm, as defined in s.
19 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

20 (b) If any violation under ss. 346.31 to 346.35 results in harm to a vulnerable
21 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the
22 violation shall be doubled.

23 **SECTION 18.** 346.43 (4) of the statutes is created to read:

24 346.43 (4) (a) In this subsection, “harm” means bodily harm, as defined in s.
25 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

1 (b) If any violation under ss. 346.37 to 346.42 results in harm to a vulnerable
2 highway user, the amount of any forfeiture specified in subs. (1) to (3) for the violation
3 shall be doubled. If sub. (1) (b) 3. applies with respect to the violation, the doubling
4 of the forfeiture under this subsection shall apply in addition to any doubling under
5 sub. (1) (b) 3.

6 **SECTION 19.** 346.49 (5) of the statutes is created to read:

7 346.49 (5) (a) In this subsection, “harm” means bodily harm, as defined in s.
8 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

9 (b) If any violation under s. 346.44, 346.45, 346.455, 346.46, or 346.47 to 346.48
10 results in harm to a vulnerable highway user, the amount of any forfeiture specified
11 in subs. (1), (1g), (2), (2m), and (4) for the violation shall be doubled. If sub. (1) (c)
12 applies with respect to the violation, the doubling of the forfeiture under this
13 subsection shall apply in addition to any doubling under sub. (1) (c).

14 **SECTION 20.** 346.56 (5) of the statutes is created to read:

15 346.56 (5) (a) In this subsection, “harm” means bodily harm, as defined in s.
16 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

17 (b) If any violation under ss. 346.503 to 346.55 results in harm to a vulnerable
18 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation
19 shall be doubled.

20 **SECTION 21.** 346.60 (6) of the statutes is created to read:

21 346.60 (6) (a) In this subsection, “harm” means bodily harm, as defined in s.
22 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

23 (b) If any violation under ss. 346.57 to 346.595 results in harm to a vulnerable
24 highway user, the amount of any forfeiture specified in subs. (1) to (5) for the violation
25 shall be doubled. If sub. (3m) applies with respect to the violation, the doubling of

1 the forfeiture under this subsection shall apply in addition to any doubling or other
2 penalty enhancement under sub. (3m).

3 **SECTION 22.** 346.65 (3) of the statutes is renumbered 346.65 (3) (a) and
4 amended to read:

5 346.65 (3) (a) Except as provided in par. (b) and sub. (5m), any person violating
6 s. 346.62 (3) shall be fined not less than \$300 nor more than \$2,000 and may be
7 imprisoned for not less than 30 days nor more than one year in the county jail.

8 **SECTION 23.** 346.65 (3) (b) of the statutes is created to read:

9 346.65 (3) (b) If the violation of s. 346.62 (3) causes bodily harm to a vulnerable
10 highway user, the person who commits the violation is guilty of a Class H felony.

11 **SECTION 24.** 346.65 (5) of the statutes is renumbered 346.65 (5) (a) and
12 amended to read:

13 346.65 (5) (a) Except as provided in par. (b) and sub. (5m), any person violating
14 s. 346.62 (4) is guilty of a Class I felony.

15 **SECTION 25.** 346.65 (5) (b) of the statutes is created to read:

16 346.65 (5) (b) If the violation of s. 346.62 (4) causes great bodily harm to a
17 vulnerable highway user, the person who commits the violation is guilty of a Class
18 H felony.

19 **SECTION 26.** 346.74 (7) of the statutes is created to read:

20 346.74 (7) (a) In this subsection, "harm" means bodily harm, as defined in s.
21 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

22 (b) If any violation under s. 346.67 or ss. 346.68 to 346.70 results in harm to
23 a vulnerable highway user, the amount of any forfeiture or fine specified in subs. (2)
24 to (5) or s. 939.50 for the violation shall be doubled.

25 **SECTION 27.** 346.82 (3) of the statutes is created to read:

1 346.82 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.
2 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

3 (b) If any violation under ss. 346.77 to 346.805 results in harm to a vulnerable
4 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the
5 violation shall be doubled.

6 **SECTION 28.** 346.95 (1) and (2) of the statutes are amended to read:

7 346.95 (1) Any Except as provided in sub. (12) (c), any person violating s.
8 346.87, 346.88, 346.89 (2) or (4), 346.90 to 346.92 or 346.94 (1), (9), (10), (11), (12) or
9 (15) may be required to forfeit not less than \$20 nor more than \$40 for the first offense
10 and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within
11 a year.

12 (2) Any Except as provided in sub. (12) (c), any person violating s. 346.89 (1)
13 or (3) (a) or 346.94 (2), (4), or (7) may be required to forfeit not less than \$20 nor more
14 than \$400.

15 **SECTION 29.** 346.95 (12) of the statutes is created to read:

16 346.95 (12) (a) In this subsection, "harm" means bodily harm, as defined in s.
17 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

18 (b) If any violation under ss. 346.87, 346.88, or 346.90 to 346.94 results in harm
19 to a vulnerable highway user, the amount of any forfeiture specified in subs. (1) to
20 (5e) and (6) to (11) for the violation shall be doubled.

21 (c) If any violation under s. 346.89 results in harm to a vulnerable highway
22 user, the person who commits the violation is guilty of a Class I felony.

23 **SECTION 30.** 349.06 (1) (a) of the statutes is amended to read:

24 349.06 (1) (a) Except for the suspension or revocation of motor vehicle
25 operator's licenses or except as provided in par. (b), any local authority may enact and

1 enforce any traffic regulation which is in strict conformity with one or more
2 provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a
3 forfeiture. If a local authority enacts a traffic regulation in strict conformity with any
4 provision of ch. 346 for which the penalty under ch. 346 is doubled if the violation
5 results in harm to a vulnerable highway user, the applicable penalty for the violation
6 under the ordinance shall also include the doubling of the forfeiture.

7 **SECTION 31.** 939.22 (44m) of the statutes is created to read:

8 939.22 (44m) “Vulnerable highway user” has the meaning given in s. 340.01
9 (74p).

10 **SECTION 32.** 940.25 (1b) of the statutes is created to read:

11 940.25 (1b) Any person who does any of the following is guilty of a Class H
12 felony:

13 (a) Causes bodily harm to a vulnerable highway user by the operation of a
14 vehicle while under the influence of an intoxicant.

15 (b) Causes bodily harm to a vulnerable highway user by the operation of a
16 vehicle while the person has a detectable amount of a restricted controlled substance
17 in his or her blood.

18 (c) Causes bodily harm to a vulnerable highway user by the operation of a
19 vehicle while the person has a prohibited alcohol concentration, as defined in s.
20 340.01 (46m).

21 (d) Causes bodily harm to a vulnerable highway user by the operation of a
22 commercial motor vehicle while the person has an alcohol concentration of 0.04 or
23 more but less than 0.08.

24 **SECTION 33.** 940.25 (1m) (a) of the statutes is amended to read:

1 940.25 (1m) (a) A person may be charged with and a prosecutor may proceed
2 upon an information based upon a violation of any combination of sub. (1) (a), (am),
3 or (b); any combination of sub. (1) (a), (am), or (bm); any combination of sub. (1) (c),
4 (cm), or (d); ~~or any combination of sub. (1) (c), (cm), or (e);~~ any combination of sub. (1b)
5 (a), (b), or (c); or any combination of sub. (1b) (a), (b), or (d) for acts arising out of the
6 same incident or occurrence.

7 **SECTION 34.** 940.25 (1m) (b) of the statutes is amended to read:

8 940.25 (1m) (b) If a person is charged in an information with any of the
9 combinations of crimes referred to in par. (a), the crimes shall be joined under s.
10 971.12. If the person is found guilty of more than one of the crimes so charged for
11 acts arising out of the same incident or occurrence, there shall be a single conviction
12 for purposes of sentencing and for purposes of counting convictions under s. 23.33
13 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or
14 under s. 350.11 (3) (a) 2. and 3. ~~Subsection~~ Subsections (1) (a), (am), (b), (bm), (c),
15 (cm), (d), and (e) and (1b) (a), (b), (c), and (d) each require proof of a fact for conviction
16 which the others do not require.

17 **SECTION 35.** 940.25 (2) (a) of the statutes is amended to read:

18 940.25 (2) (a) The defendant has a defense if he or she proves by a
19 preponderance of the evidence that the great bodily harm or bodily harm would have
20 occurred even if he or she had been exercising due care and he or she had not been
21 under the influence of an intoxicant, did not have a detectable amount of a restricted
22 controlled substance in his or her blood, or did not have an alcohol concentration
23 described under sub. (1) (b), (bm), (d) or (e) or (1b) (c) or (d).

24 **SECTION 36. Initial applicability.**

- 1701

Gary, Aaron

From: Archibald, Sarah
Sent: Wednesday, July 10, 2013 11:17 AM
To: Gary, Aaron
Cc: Bruce, Cory
Subject: FW: bikes
Attachments: VU offenses.proposed changes.docx; ATT491996.htm

Hi Aaron,

Attached you will find a spreadsheet with requested changes (in the righthand column) to the vulnerable user bill. In addition, we would like to remove motorcyclists from the list of vulnerable users. Please call with any questions: 6-0751.

Also, when you finish the draft and it comes out of editing, please make sure I get a copy (not just Sen.Olsen).

Thanks!
Sarah

From: AJ Wilson [<mailto:awilson@hwz-gov.com>]
Sent: Tuesday, July 09, 2013 5:47 PM
To: Archibald, Sarah
Cc: Bruce, Cory; Harriman, Amy; Greg Hubbard
Subject: Re: bikes

Sounds good, Sarah. Thanks very much. Attached is the spreadsheet. Please give me a call with any questions.

AJ Wilson
Hubbard Wilson & Zelenkova, LLC
44 E. Mifflin Street, Suite 605
Madison, WI 53703
Mobile: (608)772-5670

On Jul 9, 2013, at 3:50 PM, "Archibald, Sarah" <Sarah.Archibald@legis.wisconsin.gov> wrote:

Hi AJ and Cory,

Talked to Luther. He's ok with the proposed changes on the spreadsheet you brought in a few weeks ago. He'd also like us to remove motorcyclists from the list of vulnerable users, get the draft updated with all the changes, and then run it by ABATE to make sure they're cool with it.

Two questions, AJ, would you send the spreadsheet electronically so I can share it with Aaron at LRB? And Cory, I have a note that Gary might want to have the penalties for inattentive be graduated like failure to yield? If so, can you work with AJ to get the language incorporated into the spreadsheet, or separately get the language to Aaron and copy me?

Thanks!
Sarah

From: AJ Wilson [mailto:awilson@hwz-gov.com]
Sent: Monday, July 08, 2013 3:27 PM
To: Archibald, Sarah
Subject: bikes

Hey Sarah,

Just wondering if you've had any opportunity to look at options on the VU legislation as it relates to the motorcycles?

Thanks,

AJ

AJ Wilson
Hubbard Wilson & Zelenkova, LLC
44 E. Mifflin Street, Suite 605
Madison, WI 53703
Mobile: (608)772-5670

Offense	Current Law Penalty if Harm	Under Bill Penalty Enhancer for "Harm" to Vulnerable User (original draft)	Proposed Change to Penalty Enhancer for level of harm to Vulnerable User
OWI	Varies on number of offense and harm. All felonies except 1 st offense with "injury"	Bodily harm while OWI is Class H felony. (No increased license suspension)	Bodily Harm: Double all applicable fines Great Bodily Harm: Class B Misdemeanor and additional 6 mos. license suspension by DOT Death: Class A Misdemeanor and additional 6 mos. license suspension by DOT *Require class for license reinstatement
Reckless	\$300-\$2000 and may be imprisoned from 30 days to 1 year.	Class I felony and DOT must revoke license for 1 year.	Bodily Harm: Double all fines Great Bodily Harm: Class B Misdemeanor and 6 mos. license suspension by DOT Death: Class A Misdemeanor and 1 year license suspension by DOT *Require class for license reinstatement
Inattentive	\$20-\$500 (minimum increases with multiple offenses).	Class I felony and Court must suspend license 1 year.	Bodily Harm: Double all fines Great Bodily Harm: Class B Misdemeanor and 6 mos. license suspension by DOT Death: Class A Misdemeanor and 1 year license suspension by DOT *Require class for license reinstatement
Passing	\$25-\$200 first offense; \$50-\$500 beyond.	Class I felony and Court must suspend license 1 year.	Bodily Harm: Double all fines Great Bodily Harm: Class B Misdemeanor and 6 mos. license suspension by DOT Death: Class A Misdemeanor and 1 year license suspension by DOT *Require class for license reinstatement
Failure to Yield	Bodily Harm/Great Bodily Harm/ Death \$200/\$500/\$1000 and DOT suspends license for 2/3/9 months.	Any harm becomes Class I felony and DOT must suspend license for one year.	Bodily Harm: Double all fines Great Bodily Harm: Class B Misdemeanor and 6 mos. license suspension by DOT Death: Class A Misdemeanor and 1 year license suspension by DOT *Require class for license reinstatement
Charge		Penalty	
Class A Misdemeanor		Fine up to \$10,000 or imprisonment not exceeding 9 months, or both.	
Class B Misdemeanor		Fine up to \$1,000 or imprisonment not exceeding 90 days, or both.	
Class H Felony		Fine up to \$10,000 or imprisonment not exceeding 6 years, or both.	
Class I Felony		Fine up to \$10,000 or imprisonment not exceeding 3.5 years, or both.	

Gary, Aaron

From: Gary, Aaron
Sent: Monday, July 15, 2013 8:15 AM
To: Bruce, Cory; 'AJ Wilson'; Archibald, Sarah
Cc: Harriman, Amy; Mueller, Eric
Subject: RE: Vulnerable Highway User Draft

For reckless driving, I should have also mentioned that if death results, it is a Class D felony (s. 940.06) or Class G felony (s. 940.10) under current law.

From: Gary, Aaron
Sent: Monday, July 15, 2013 7:45 AM
To: Bruce, Cory; 'AJ Wilson'; Archibald, Sarah
Cc: Harriman, Amy; Mueller, Eric
Subject: RE: Vulnerable Highway User Draft

7/16 Hc w/ Sarah re e-mails
intent: not to reduce, only
enhance, penalties ARG

Hi Cory,

I also noticed there is the same problem with reckless driving. If a person commits a reckless driving violation causing bodily harm, it is a crime punishable by fine and/or jail time, and if the person causes great bodily harm it is a Class I felony (with one year license revocation). So I think the changes in the chart don't fit very well with current law here.

Please let us know how you want to proceed with the OWI and reckless driving provisions.

Thanks. Aaron

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

From: Gary, Aaron
Sent: Friday, July 12, 2013 1:55 PM
To: Bruce, Cory; 'AJ Wilson'; Archibald, Sarah
Cc: Harriman, Amy; Mueller, Eric
Subject: RE: Vulnerable Highway User Draft

Hi Cory,

Yes, it seems to me that there is a problem here, as the bill would seem to reduce penalties for all OWI offenses (regardless of whether result is death, great bodily harm, or bodily harm) where a vulnerable user is involved, which doesn't seem to be consistent with your intent (and may look pretty strange in the analysis). As to charging discretion, issues arise as to whether this would become a lesser included offense and allow the defense to seek a lesser charge/penalty even if the prosecutor deliberately chose not to charge the lesser and go for the max. Perhaps you might consider leaving most of the OWI provisions out of the bill and sticking with the higher current law penalties for OWI except to make it a Class A misdemeanor for a person to cause harm by OWI to a vulnerable user if the person has no priors. I believe this would be the one instance where a Class A misdemeanor would actually be a penalty enhancement (please see p. 2 of the analysis, the first full paragraph, last sentence of that paragraph).

Eric is actually the OWI drafter, so he can field any additional questions you have on the OWI piece. I also believe current OWI law already includes many provisions on license suspension/revocation, but I am not familiar with the details. Eric, please correct me if any of the foregoing is mistaken.

Aaron

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

From: Bruce, Cory
Sent: Thursday, July 11, 2013 9:07 AM
To: AJ Wilson; Archibald, Sarah
Cc: Harriman, Amy; Gary, Aaron
Subject: Vulnerable Highway User Draft

Aaron,
Sarah in Sen. Olsen's office sent you some changes we'd like to make to the vulnerable highway user draft. One thing came up yesterday that we'd like to have clarified if possible. I was concerned with the possibility with OWI and killing someone that it would result in a misdemeanor. (as noted on the chart sent to you). Can you please see the comments below and clarify for us what is the case?

Thanks,
Cory Bruce
Bies Office

From: AJ Wilson [<mailto:awilson@hwz-gov.com>]
Sent: Wednesday, July 10, 2013 6:31 PM
To: Archibald, Sarah; Bruce, Cory
Cc: Harriman, Amy
Subject: Re: bikes

On the OWI, I'm of the same belief as Sarah - that it would just be one more potential charge - current law on OWI with harm would probably be the main charge where this is just one more thing they could charge on. Definitely worth confirming with LRB/Leg Council because I certainly wouldn't want our bill to somehow and unintentionally supplant stiffer penalties in such a situation.

AJ Wilson
Hubbard Wilson & Zelenkova, LLC
44 E. Mifflin Street, Suite 605
Madison, WI 53703
Mobile: (608)772-5670

On Jul 10, 2013, at 11:36 AM, "Archibald, Sarah" <Sarah.Archibald@legis.wisconsin.gov> wrote:

Hi Cory,

I hear you. Our understanding is that if you were drunk and killed a bicyclist, you could still be charged with a felony under existing laws – this bill just wouldn't require that charge.