



## 2007 ASSEMBLY BILL 734

January 29, 2008 - Introduced by Representatives MUSSER, VRUWINK, BIES, BOYLE, ALBERS, VAN AKKEREN, HAHN and VOS, cosponsored by Senator A. LASEE. Referred to Committee on Judiciary and Ethics.

1     **AN ACT** *to amend* 343.23 (2) (b), 343.305 (10) (b) 1., 343.305 (10) (b) 2., 343.305  
2           (10) (b) 3., 343.305 (10) (b) 4., 343.307 (1) (c), 346.65 (2) (am) 2., 346.65 (2) (am)  
3           3., 346.65 (2) (am) 4., 346.65 (2) (am) 5. and 346.65 (2c); and *to create* 343.307  
4           (1) (g) and 346.65 (2d) of the statutes; **relating to:** operating while intoxicated  
5           and providing a penalty.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, the Department of Transportation (DOT) maintains a driving record for every person who possesses a driver's license. When DOT receives notice that a person was convicted of an offense relating to operating certain vehicles while intoxicated or operating certain vehicles with a prohibited blood alcohol concentration (OWI-related offense), with certain exceptions, that information is kept permanently in the person's driving record. However, current law requires DOT to purge the record of a first violation from a driver's record if the person who committed the violation had a blood alcohol concentration between 0.08 and 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person operating a commercial motor vehicle, and if the person does not commit another OWI-related offense during the ten-year period following the violation. Also under current law, when a person commits an OWI-related offense, the court is required to consider the number of previous OWI-related offenses committed by the person to determine the person's penalty.

This bill eliminates the requirements that DOT retain or purge certain OWI-related records, but forbids courts to count, for the purposes of determining a

**ASSEMBLY BILL 734**

penalty, any OWI-related offense that occurred more than ten years before the current offense so long as the offense does not involve causing serious bodily injury or death to another person or the person has not committed a third OWI-related offense.

---

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

1           **SECTION 1.** 343.23 (2) (b) of the statutes is amended to read:

2           343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by  
3 the department so that the complete operator's record is available for the use of the  
4 secretary in determining whether operating privileges of such person shall be  
5 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest  
6 of public safety. The record of suspensions, revocations, and convictions that would  
7 be counted under s. 343.307 (2) shall be maintained permanently, except that the  
8 department shall purge the record of a first violation of s. 23.33 (4e) (a) 2., 30.681 (1)  
9 (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the  
10 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the  
11 time of the violation, if the person does not have a commercial driver license, if the  
12 violation was not committed by a person operating a commercial motor vehicle, and  
13 if the person has no other suspension, revocation, or conviction that would be counted  
14 under s. 343.307 during that 10-year period. The record of convictions for  
15 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10  
16 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and  
17 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The  
18 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be  
19 maintained permanently, except that 5 years after a licensee transfers residency to  
20 another state such record may be transferred to another state of licensure of the

**ASSEMBLY BILL 734**

1 licensee if that state accepts responsibility for maintaining a permanent record of  
2 convictions for disqualifying offenses. Such reports and records may be cumulative  
3 beyond the period for which a license is granted, but the secretary, in exercising the  
4 power of suspension granted under s. 343.32 (2) may consider only those reports and  
5 records entered during the 4-year period immediately preceding the exercise of such  
6 power of suspension.

7 **SECTION 2.** 343.305 (10) (b) 1. of the statutes is amended to read:

8 343.305 (10) (b) 1. ~~Except as provided in subds. 3. and 4., the~~ The court shall  
9 revoke the person's operating privilege under this paragraph according to the  
10 number of previous suspensions, revocations, or convictions committed on or after  
11 January 1, 1989, that would be counted under s. 343.307 (2) (a) to (g), plus the  
12 number of previous convictions under s. 940.09 (1) or 940.25. Suspensions,  
13 revocations, and convictions arising out of the same incident shall be counted as one.  
14 If a person has a conviction, suspension, or revocation for any offense that is counted  
15 under s. 343.307 (2), that conviction, suspension, or revocation shall count as a prior  
16 conviction, suspension, or revocation under this subdivision if the offense occurred  
17 within 10 years of any other offense, if the offense followed any 10-year period during  
18 which the person was convicted of 2 or more offenses that could be counted under s.  
19 343.307 (2), or if the offense followed a conviction under s. 940.09 or 940.25.

20 **SECTION 3.** 343.305 (10) (b) 2. of the statutes is amended to read:

21 343.305 (10) (b) 2. Except as provided in subd. 3., 4. or 4m., ~~for the first~~  
22 ~~improper refusal,~~ the court shall revoke the person's operating privilege for one year.  
23 After the first 30 days of the revocation period, the person is eligible for an  
24 occupational license under s. 343.10.

25 **SECTION 4.** 343.305 (10) (b) 3. of the statutes is amended to read:

**ASSEMBLY BILL 734****SECTION 4**

1           343.305 (10) (b) 3. ~~Except as provided in subd. 4m., if~~ If the number of previous  
2 suspensions, revocations, or convictions counted under ss. 940.09 (1) and 940.25 in  
3 ~~the person's lifetime, plus the total number of other convictions, suspensions, and~~  
4 ~~revocations counted under s. 343.307 (2) subd. 1.~~ within a 10-year period, equals 2,  
5 the court shall revoke the person's operating privilege for 2 years, unless a longer  
6 period of revocation is required under subd. 4m. After the first 90 days of the  
7 revocation period or, if the total number of convictions, suspensions, and revocations  
8 counted under this subdivision within any 5-year period equals 2 or more, after one  
9 year of the revocation period has elapsed, the person is eligible for an occupational  
10 license under s. 343.10 if he or she has completed the assessment and is complying  
11 with the driver safety plan.

12           **SECTION 5.** 343.305 (10) (b) 4. of the statutes is amended to read:

13           343.305 (10) (b) 4. ~~Except as provided in subd. 4m., if~~ If the number of previous  
14 suspensions, revocations, or convictions counted under ss. 940.09 (1) and 940.25 in  
15 ~~the person's lifetime, plus the total number of other convictions, suspensions, and~~  
16 ~~revocations counted under s. 343.307 (2), subd. 1.~~ equals 3 or more, the court shall  
17 revoke the person's operating privilege for 3 years, unless a longer period of  
18 revocation is required under subd. 4m. After the first 120 days of the revocation  
19 period or, if the total number of convictions, suspensions, and revocations counted  
20 under this subdivision within any 5-year period equals 2 or more, after one year of  
21 the revocation period has elapsed, the person is eligible for an occupational license  
22 under s. 343.10 if he or she has completed the assessment and is complying with the  
23 driver safety plan.

24           **SECTION 6.** 343.307 (1) (c) of the statutes is amended to read:

**ASSEMBLY BILL 734**

1           343.307 (1) (c) Convictions for violations under s. 346.63 (2) ~~or 940.25, or s.~~  
2           940.09 where the offense involved the use of a vehicle.

3           **SECTION 7.** 343.307 (1) (g) of the statutes is created to read:

4           343.307 (1) (g) Convictions for violations under s. 940.25, or s. 940.09 where  
5           the offense involved the use of a vehicle.

6           **SECTION 8.** 346.65 (2) (am) 2. of the statutes is amended to read:

7           346.65 (2) (am) 2. Except as provided in pars. (bm) and (f), shall be fined not  
8           less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more  
9           than 6 months if the number of ~~convictions under ss. 940.09 (1) and 940.25 in the~~  
10          ~~person's lifetime, plus the total number of suspensions, revocations, and other~~  
11          ~~convictions counted under s. 343.307 (1) within a 10-year period, occurrences~~  
12          ~~counted under sub. (2d) equals 2, except that suspensions, revocations, or convictions~~  
13          ~~arising out of the same incident or occurrence shall be counted as one.~~

14          **SECTION 9.** 346.65 (2) (am) 3. of the statutes is amended to read:

15          346.65 (2) (am) 3. Except as provided in pars. (cm), (f), and (g), shall be fined  
16          not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days  
17          nor more than one year in the county jail if the number of ~~convictions under ss. 940.09~~  
18          ~~(1) and 940.25 in the person's lifetime, plus the total number of suspensions,~~  
19          ~~revocations, and other convictions counted under s. 343.307 (1), occurrences counted~~  
20          ~~under sub. (2d) equals 3, except that suspensions, revocations, or convictions arising~~  
21          ~~out of the same incident or occurrence shall be counted as one.~~

22          **SECTION 10.** 346.65 (2) (am) 4. of the statutes is amended to read:

23          346.65 (2) (am) 4. Except as provided in pars. (f) and (g), shall be fined not less  
24          than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more  
25          than one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and~~

**ASSEMBLY BILL 734****SECTION 10**

1 ~~940.25 in the person's lifetime, plus the total number of suspensions, revocations and~~  
2 ~~other convictions counted under s. 343.307 (1), occurrences counted under sub. (2d)~~  
3 ~~equals 4, except that suspensions, revocations or convictions arising out of the same~~  
4 ~~incident or occurrence shall be counted as one.~~

5 **SECTION 11.** 346.65 (2) (am) 5. of the statutes is amended to read:

6 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H  
7 felony and shall be fined not less than \$600 and imprisoned for not less than 6 months  
8 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
9 plus the total number of suspensions, revocations and other convictions counted  
10 under s. 343.307 (1), occurrences counted under sub. (2d) equals 5 or more, except  
11 that suspensions, revocations or convictions arising out of the same incident or  
12 occurrence shall be counted as one.

13 **SECTION 12.** 346.65 (2c) of the statutes is amended to read:

14 346.65 (2c) In sub. (2) (am) ~~2., 3., 4., and 5.~~ (2d), the time period shall be  
15 measured from the dates of the refusals or violations that resulted in the revocation  
16 or convictions. If a person has a suspension, revocation, or conviction for any offense  
17 under a local ordinance or a state statute of another state that would be counted  
18 under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior  
19 suspension, revocation, or conviction under sub. ~~(2) (am) 2., 3., 4., and 5.~~ (2d).

20 **SECTION 13.** 346.65 (2d) of the statutes is created to read:

21 346.65 (2d) (a) When counting occurrences under sub. (2) (am) 2. to 5., the court  
22 shall count the current offense and prior offenses, but may not count any suspension,  
23 revocation, or conviction described in s. 343.307 (1) (a) to (f) that occurred before  
24 January 1, 1989, or that did not occur within 10 years of any other suspension,  
25 revocation, or conviction that is described in s. 343.307 (1), except that the court shall

**ASSEMBLY BILL 734**

1 count all suspensions, revocations, or convictions that are described in s. 343.307 (1)  
2 after either of the following:

3 1. The person was convicted under s. 940.09 (1) or 940.25.

4 2. The person has received a suspension or revocation for, or has been convicted  
5 of, 2 offenses that are described in s. 343.307 (1) (a) to (f) within a 10-year period and  
6 were committed on or after January 1, 1989.

7 (b) The court shall count any suspensions, revocations, or convictions arising  
8 out of the same incident or occurrence as one.

9 **SECTION 14. Initial applicability.**

10 (1) This act first applies to offenses committed on the effective date of this  
11 subsection.

12 **SECTION 15. Effective date.**

13 (1) This act takes effect on September 30, 2007.

14 (END)