



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1582/2
EVM:kjf

2015 ASSEMBLY BILL 447

October 22, 2015 – Introduced by Representatives J. OTT, KOOYENGA, HORLACHER, SANFELIPPO, NEYLON, T. LARSON, PETRYK, BERCEAU, CRAIG and ALLEN, cosponsored by Senators DARLING, CARPENTER and NASS. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to repeal* 973.09 (2) (am); and *to amend* 48.685 (5) (bm) 4., 48.685 (5)
2 (br) 6., 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65 (2) (am) 4m., 346.65 (2) (am)
3 5., 346.65 (2) (am) 6., 346.65 (2) (am) 7., 346.65 (2) (dm) and 973.09 (2) (a) 1. d.
4 of the statutes; **relating to:** penalties for operating-while-intoxicated offenses
5 and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill increases the penalties for third or subsequent drunken driving offenses.

Under current law, a person who commits a third offense related to drunken driving or driving under the influence of an intoxicant or other drug (OWI offense) must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 45 days nor more than one year. A person who commits a fourth OWI offense must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year. A person who commits a fourth OWI offense within five years of a prior offense is guilty of a Class H felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a fifth or sixth OWI offense is guilty of a Class H felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI offense is guilty of a Class G felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or subsequent OWI offense is guilty

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of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years. Also under current law, the penalty for a Class E felony is a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both; the penalty for a Class F felony is a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and six months, or both; the penalty for a Class G felony is a fine not to exceed \$25,000 or imprisonment not to exceed ten years, or both; and the penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

Under this bill, a person who commits a third OWI offense is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 45 days. A person who commits a fourth OWI offense is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 60 days. A person who commits a fourth OWI offense within five years of a prior offense is guilty of a Class G felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a fifth or sixth OWI offense is guilty of a Class G felony and the person must be fined not less than \$600 and must be imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI offense is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or greater OWI offense is guilty of a Class E felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years.

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.** 48.685 (5) (bm) 4. of the statutes is amended to read:
2 48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1),
3 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5),
4 or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2),
5 (5), or (6) that is a felony under s. 346.65 (2) (am) ~~5., 6., or 7.~~ 3. to 7., or (f), (2j) (d), or
6 (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years
7 before the date of the investigation under sub. (2) (am).

8 **SECTION 2.** 48.685 (5) (br) 6. of the statutes is amended to read:

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1 48.685 (5) (br) 6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b),
2 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205,
3 940.207, 940.25, or 943.23 (1g), a violation of s. 948.51 (2) that is a felony under s.
4 948.51 (3) (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under
5 s. 346.65 (2) (am) ~~5., 6., or 3. to~~ 7., or (f), (2j) (d), or (3m), or an offense under ch. 961
6 that is a felony, if the person completed his or her sentence, including any probation,
7 parole, or extended supervision, or was discharged by the department of corrections,
8 less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

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

10 346.65 (2) (am) 3. Except as provided in pars. (cm), (f), and (g), is guilty of a
11 Class H felony and shall be fined not less than \$600 ~~nor more than \$2,000~~ and
12 imprisoned for not less than 45 days ~~nor more than one year in the county jail~~ if the
13 number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus
14 the total number of suspensions, revocations, and other convictions counted under
15 s. 343.307 (1), equals 3, except that suspensions, revocations, or convictions arising
16 out of the same incident or occurrence shall be counted as one.

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

18 346.65 (2) (am) 4. Except as provided in subd. 4m. and pars. (dm), (f), and (g),
19 is guilty of a Class H felony and shall be fined not less than \$600 ~~nor more than \$2,000~~
20 and imprisoned for not less than 60 days ~~nor more than one year in the county jail~~
21 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
22 plus the total number of suspensions, revocations, and other convictions counted
23 under s. 343.307 (1), equals 4, except that suspensions, revocations, or convictions
24 arising out of the same incident or occurrence shall be counted as one.

25 **SECTION 5.** 346.65 (2) (am) 4m. of the statutes is amended to read:

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1 346.65 (2) (am) 4m. Except as provided in pars. ~~(dm)~~, (f), and (g), is guilty of
2 a Class ~~H~~ G felony and shall be fined not less than \$600 and imprisoned for not less
3 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the
4 person's lifetime, plus the total number of suspensions, revocations, and other
5 convictions counted under s. 343.307 (1), equals 4 and the person committed an
6 offense that resulted in a suspension, revocation, or other conviction counted under
7 s. 343.307 (1) within 5 years prior to the day of current offense, except that
8 suspensions, revocations, or convictions arising out of the same incident or
9 occurrence shall be counted as one.

10 **SECTION 6.** 346.65 (2) (am) 5. of the statutes is amended to read:

11 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class
12 ~~H~~ G felony and shall be fined not less than \$600 and imprisoned for not less than
13 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
14 lifetime, plus the total number of suspensions, revocations and other convictions
15 counted under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or
16 convictions arising out of the same incident or occurrence shall be counted as one.

17 **SECTION 7.** 346.65 (2) (am) 6. of the statutes is amended to read:

18 346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class ~~G~~ F felony
19 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
20 plus the total number of suspensions, revocations, and other convictions counted
21 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or
22 convictions arising out of the same incident or occurrence shall be counted as one.
23 The court shall impose a bifurcated sentence under s. 973.01 and the confinement
24 portion of the bifurcated sentence imposed on the person shall be not less than 3
25 years.

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1 **SECTION 8.** 346.65 (2) (am) 7. of the statutes is amended to read:

2 346.65 **(2)** (am) 7. Except as provided in par. (f), is guilty of a Class ~~F~~ E felony
3 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
4 plus the total number of suspensions, revocations, and other convictions counted
5 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or
6 convictions arising out of the same incident or occurrence shall be counted as one.
7 The court shall impose a bifurcated sentence under s. 973.01 and the confinement
8 portion of the bifurcated sentence imposed on the person shall be not less than 4
9 years.

10 **SECTION 9.** 346.65 (2) (dm) of the statutes is amended to read:

11 346.65 **(2)** (dm) In any county that opts to offer a reduced minimum period of
12 imprisonment for the successful completion of a probation period that includes
13 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
14 and 940.25 in the person's lifetime, plus the total number of suspensions,
15 revocations, and other convictions counted under s. 343.307 (1) equals 4, and par.
16 ~~(am) 4m. does not apply~~, except that suspensions, revocations, or convictions arising
17 out of the same incident or occurrence shall be counted as one, the fine shall be the
18 same as under par. (am) 4. or 4m., but the period of imprisonment shall be not less
19 than 60 days if par. (am) 4. applies or not less than 6 months if par. (am) 4m. applies,
20 except that if the person successfully completes a period of probation that includes
21 alcohol and other drug treatment, the period of imprisonment shall be not less than
22 29 days if par. (am) 4. applies or not less than 3 months if par. (am) 4m. applies. A
23 person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2j)
24 (bm), (cm), or (cr) or (3r) once in his or her lifetime.

25 **SECTION 10.** 973.09 (2) (a) 1. d. of the statutes is amended to read:

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SECTION 10

1 973.09 (2) (a) 1. d. A misdemeanor under s. 23.33 (4c) or (4p) (e), 30.681, 30.684
2 (5), 350.101, 350.104 (5), or 350.17 or a misdemeanor punishable under s. ~~346.63~~ to
3 ~~which s. 973.09 (1) (d) applies~~ 346.65 (2) (am) 2.

4 **SECTION 11.** 973.09 (2) (am) of the statutes is repealed.

5 **SECTION 12. Initial applicability.**

6 (1) This act first applies to violations committed or refusals occurring on the
7 effective date of this subsection, but does not preclude the counting of other
8 convictions, suspensions, or revocations as prior convictions, suspensions, or
9 revocations for purposes of administrative action by the department of
10 transportation, sentencing by a court, or revocation or suspension of motor vehicle
11 operating privileges.

12 **SECTION 13. Effective date.**

13 (1) This act takes effect on January 1, 2017.

14 (END)