



## 2009 ASSEMBLY BILL 181

April 2, 2009 – Introduced by Representatives KRUSICK, GUNDRUM, STONE, BALLWEG, CULLEN, GUNDERSON, KAUFERT, KERKMAN, KLEEFISCH, KNODL, LEMAHIEU, LOTHIAN, MURSAU, NASS, NYGREN, A. OTT, J. OTT, PRIDEMORE, RIPP, SPANBAUER, SUDER, TOWNSEND, TURNER, ZIPPERER and ZEPNICK, cosponsored by Senators CARPENTER, LAZICH, DARLING, GROTHMAN, KANAVAS, A. LASEE, LEHMAN, PLALE and SCHULTZ, by request of the family of Nicholas Dams, the family of Kristy Wanek, Greendale Police Chief Rob Dams, father of Nicholas, Wisconsin Chiefs of Police Association, Wisconsin County Police Association, Milwaukee Police Association, Milwaukee County Law Enforcement Executives Association, Milwaukee Deputy Sheriffs' Association, Milwaukee County District Attorney John Chisholm. Referred to Committee on Judiciary and Ethics.

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

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### *Analysis by the Legislative Reference Bureau*

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

Under current law, a person convicted of OWS must forfeit not less than \$50 nor more than \$200. In addition, a person convicted of "knowing" OWS may be required to forfeit not more than \$200. A person convicted of first-offense OAR must forfeit not more than \$2,500 unless the underlying operating privilege revocation was the

**ASSEMBLY BILL 181**

result of specified traffic violations involving alcohol or controlled substances. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified traffic violations involving alcohol or controlled substances must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a “knowing” OWS violation or OAR violation, causes: 1) damage to the property of another must forfeit \$1,000; 2) injury to another person must forfeit \$5,000; or 3) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person’s operator’s license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator’s license or knowingly with an operator’s license that has been revoked, suspended, or canceled, the person causes: 1) damage to the property of another, the person must forfeit \$1,000; 2) injury to another person, the person must forfeit \$5,000; or 3) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill repeals “knowing” OWS as a separate and distinct violation and repeals all other provisions of 2005 Wisconsin Act 412. The bill creates new penalties for OWS, OAR, and OWL violations in which the person, in the course of the violation, causes great bodily harm or death to another person.

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

**ASSEMBLY BILL 181**

not less than \$5,000 nor more than \$7,500 or imprisoned for not more than one year or both if, at the time of the violation, the person did not know that his or her operating privilege was revoked; or 2) is guilty of a Class I felony if the person knew. If the person causes the death of another in the course of the OAR violation, the person: 1) must be fined not less than \$7,500 nor more than \$10,000 or imprisoned for not more than one year or both if the person did not know that his or her operating privilege was revoked; or 2) is guilty of a Class H felony if the person knew.

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

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

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

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

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

**ASSEMBLY BILL 181**

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

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

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

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

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

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

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

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

**ASSEMBLY BILL 181**

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

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

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

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

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

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

**ASSEMBLY BILL 181****SECTION 7**

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 181**

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

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

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

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

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

17 343.44 (2) (ad) In this subsection, "great bodily harm" has the meaning given  
18 in s. 939.22 (14).

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

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

**ASSEMBLY BILL 181**

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

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

6           **SECTION 17.** 343.44 (2) (ar) 3. and 4. of the statutes are created to read:

7           343.44 (2) (ar) 3. Any person who violates sub. (1) (b) and, in the course of the  
8 violation, causes great bodily harm to another person shall be fined not less than  
9 \$5,000 nor more than \$7,500 or imprisoned for not more than one year in the county  
10 jail or both, except that, if the person knows at the time of the violation that his or  
11 her operating privilege has been revoked, the person is guilty of a Class I felony.

12           4. Any person who violates sub. (1) (b) and, in the course of the violation, causes  
13 the death of another person shall be fined not less than \$7,500 nor more than \$10,000  
14 or imprisoned for not more than one year in the county jail or both, except that, if the  
15 person knows at the time of the violation that his or her operating privilege has been  
16 revoked, the person is guilty of a Class H felony.

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

19           343.44 (2) (ar) 1. Any Except as provided in subds. 2. to 4., any person who  
20 violates sub. (1) (b) after July 27, 2005, shall forfeit not more than \$2,500, except that,

21           2. Except as provided in subds. 3. and 4., any person who violates sub. (1) (b)  
22 shall be fined not more than \$2,500 or imprisoned for not more than one year in the  
23 county jail or both if the person has been convicted of a previous violation of sub. (1)  
24 (b) within the preceding 5-year period or if the revocation identified under sub. (1)



**ASSEMBLY BILL 181**

1 (b) resulted from an offense that may be counted under s. 343.307 (2), the penalty  
2 under par. (b) shall apply.

3 **SECTION 19.** 343.44 (2) (b) (intro.) of the statutes is amended to read:

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

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

10 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than  
11 \$2,500 or imprisoned for not more than one year in the county jail or both.

12 **SECTION 21.** 343.44 (2) (e) to (h) of the statutes are repealed.

13 **SECTION 22. Initial applicability.**

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

17 **SECTION 23. Effective date.**

18 (1) This act takes effect on the first day of the 3rd month beginning after  
19 publication.

20 (END)