



1995 ASSEMBLY BILL 144

February 15, 1995 – Introduced by Representatives MUSSER, SERATTI, ALBERS, LADWIG, AINSWORTH, VRAKAS, GOETSCH, OLSEN, BRANDEMUEHL and NASS, cosponsored by Senator BUETTNER. Referred to Committee on Highways and Transportation.

1 **AN ACT to amend** 343.30 (1p), 343.30 (1q) (h), 343.303, 343.305 (3) (a) and (b),
2 343.305 (5) (b), 343.305 (9) (a) 1., 343.305 (9) (a) 5. a., 343.305 (9) (d), 343.305
3 (10) (em), 343.307 (1) (a) and (b), 343.307 (2) (a) and (b), 349.03 (2m) and 349.06
4 (1m); and **to create** 346.63 (2g) and 346.65 (2p) of the statutes; **relating to:**
5 driving a motor vehicle that contains a minor passenger while under the
6 influence of an intoxicant, a controlled substance or any other drug that renders
7 the driver incapable of safely driving, and providing a penalty.

Analysis by the Legislative Reference Bureau

In addition to the absolute sobriety offense applicable to young drivers and to commercial motor vehicle drivers, there are currently 4 kinds of operating while intoxicated offenses relating to the operation of a motor vehicle or of a commercial motor vehicle while under the influence of alcohol or a controlled substance or both (OWI): ordinary OWI, OWI causing injury, OWI causing great bodily harm and OWI causing death. Another OWI offense involves the improper refusal to take a test to determine the person's blood alcohol concentration.

This bill creates a new, separate OWI offense. Under the bill, no person may drive or operate a motor vehicle that contains a minor passenger while the person is under the influence of alcohol or a controlled substance or both. The new offense may be counted when determining the number of prior OWI offenses for purposes of sentencing and license suspension or revocation. Municipalities may enact ordinances in compliance with the new offense and are given authority to suspend an operator's license for a violation. The penalties are similar to those imposed on young drivers who commit an absolute sobriety offense.

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.** 343.30 (1p) of the statutes is amended to read:

2 343.30 **(1p)** Notwithstanding sub. (1), a court shall suspend the operating
3 privilege of a person for 3 months upon the person's conviction by the court for
4 violation of s. 346.63 (2g) or (2m) or a local ordinance in conformity therewith.

5 **SECTION 2.** 343.30 (1q) (h) of the statutes is amended to read:

6 343.30 **(1q)** (h) The court or department shall provide that the period of
7 suspension or revocation imposed under this subsection shall be reduced by any
8 period of suspension or revocation previously served under s. 343.305 if the
9 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63
10 (1), (2g) or (2m) or a local ordinance in conformity therewith arise out of the same
11 incident or occurrence. The court or department shall order that the period of
12 suspension or revocation imposed under this subsection run concurrently with any
13 period of time remaining on a suspension or revocation imposed under s. 343.305
14 arising out of the same incident or occurrence. The court may modify an occupational
15 license authorized under s. 343.305 (8) (d) in accordance with this subsection.

16 **SECTION 3.** 343.303 of the statutes is amended to read:

17 **343.303 Preliminary breath screening test.** If a law enforcement officer
18 has probable cause to believe that the person is violating or has violated s. 346.63 (1),
19 (2g) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or
20 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer
21 detects any presence of alcohol, a controlled substance or other drug, or a

1 combination thereof, on a person driving or operating or on duty time with respect
2 to a commercial motor vehicle or has reason to believe that the person is violating or
3 has violated s. 346.63 (7) or a local ordinance in conformity therewith, the officer,
4 prior to an arrest, may request the person to provide a sample of his or her breath
5 for a preliminary breath screening test using a device approved by the department
6 for this purpose. The result of this preliminary breath screening test may be used
7 by the law enforcement officer for the purpose of deciding whether or not the person
8 shall be arrested for a violation of s. 346.63 (1), (2g), (2m), (5) or (7) or a local
9 ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25 and
10 whether or not to require or request chemical tests as authorized under s. 343.305
11 (3). The result of the preliminary breath screening test shall not be admissible in any
12 action or proceeding except to show probable cause for an arrest, if the arrest is
13 challenged, or to prove that a chemical test was properly required or requested of a
14 person under s. 343.305 (3). Following the screening test, additional tests may be
15 required or requested of the driver under s. 343.305 (3). The general penalty
16 provision under s. 939.61 (1) does not apply to a refusal to take a preliminary breath
17 screening test.

18 **SECTION 4.** 343.305 (3) (a) and (b) of the statutes are amended to read:

19 343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 (1), (2g), (2m)
20 or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2)
21 or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law
22 enforcement officer may request the person to provide one or more samples of his or
23 her breath, blood or urine for the purpose specified under sub. (2). Compliance with
24 a request for one type of sample does not bar a subsequent request for a different type
25 of sample.

1 (b) A person who is unconscious or otherwise not capable of withdrawing
2 consent is presumed not to have withdrawn consent under this subsection, and if a
3 law enforcement officer has probable cause to believe that the person has violated
4 s. 346.63 (1), (2g), (2m) or (5) or a local ordinance in conformity therewith, or s. 346.63
5 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or
6 detects any presence of alcohol, controlled substance or other drug, or a combination
7 thereof, on a person driving or operating or on duty time with respect to a commercial
8 motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or
9 more samples specified in par. (a) or (am) may be administered to the person.

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

11 343.305 (5) (b) Blood may be withdrawn from the person arrested for violation
12 of s. 346.63 (1), (2), (2g), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense
13 involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2g),
14 (2m) or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity
15 of alcohol, a controlled substance, a combination of alcohol and a controlled
16 substance, any other drug or a combination of alcohol and any other drug in the blood
17 only by a physician, registered nurse, medical technologist, physician assistant or
18 person acting under the direction of a physician.

19 **SECTION 6.** 343.305 (9) (a) 1. of the statutes is amended to read:

20 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed
21 the person under arrest and issued a citation, if appropriate, for a violation of s.
22 346.63 (1), (2g), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63
23 (2) or (6), 940.09 (1) or 940.25.

24 **SECTION 7.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

1 343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the
2 person was driving or operating a motor vehicle while under the influence of alcohol,
3 a controlled substance or a combination of both, under the influence of any other drug
4 to a degree which renders the person incapable of safely driving, or under the
5 combined influence of alcohol and any other drug to a degree which renders the
6 person incapable of safely driving or having a prohibited alcohol concentration or, if
7 the person was driving or operating a commercial motor vehicle, an alcohol
8 concentration of 0.04 or more and whether the person was lawfully placed under
9 arrest for violation of s. 346.63 (1), (2g), (2m) or (5) or a local ordinance in conformity
10 therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

11 **SECTION 8.** 343.305 (9) (d) of the statutes is amended to read:

12 343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court
13 shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined
14 adversely to the person, the court shall proceed under sub. (10). If one or more of the
15 issues is determined favorably to the person, the court shall order that no action be
16 taken on the operating privilege on account of the person's refusal to take the test in
17 question. This section does not preclude the prosecution of the person for violation
18 of s. 346.63 (1), (2g), (2m), (5) or (7) or a local ordinance in conformity therewith, s.
19 346.63 (2) or (6), 940.09 (1) or 940.25.

20 **SECTION 9.** 343.305 (10) (em) of the statutes is amended to read:

21 343.305 (10) (em) One penalty for improperly refusing to submit to a test for
22 intoxication regarding a person arrested for a violation of s. 346.63 (2g) or (2m), or
23 a local ordinance in conformity therewith, is revocation of the person's operating
24 privilege for 6 months. After the first 15 days of the revocation period, the person
25 is eligible for an occupational license under s. 343.10. Any such improper refusal or

1 revocation for the refusal does not count as a prior refusal or a prior revocation under
2 this section or ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be
3 required to submit to and comply with any assessment or driver safety plan under
4 pars. (c) and (d).

5 **SECTION 10.** 343.307 (1) (a) and (b) of the statutes are amended to read:

6 343.307 (1) (a) Convictions for violations under s. 346.63 (1) or (2g), or a local
7 ordinance in conformity with that section.

8 (b) Convictions for violations of a law of a federally recognized American Indian
9 tribe or band in this state in conformity with s. 346.63 (1) or (2g).

10 **SECTION 11.** 343.307 (2) (a) and (b) of the statutes are amended to read:

11 343.307 (2) (a) Convictions for violations under s. 346.63 (1), (2g) or (5), or
12 under a local ordinance in conformity with ~~either section s. 346.63 (1), (2g) or (5).~~

13 (b) Convictions for violations of a law of a federally recognized American Indian
14 tribe or band in this state in conformity with s. 346.63 (1), (2g) or (5).

15 **SECTION 12.** 346.63 (2g) of the statutes is created to read:

16 346.63 (2g) No person may drive or operate a motor vehicle that contains a
17 minor passenger while the person has a prohibited alcohol concentration or while the
18 person is under the influence of an intoxicant or a controlled substance or a
19 combination of an intoxicant and a controlled substance, under the influence of any
20 other drug to a degree which renders him or her incapable of safely driving, or under
21 the combined influence of an intoxicant and any other drug to a degree which renders
22 him or her incapable of safely driving. One penalty for violation of this subsection
23 is suspension of a person's operating privilege under s. 343.30 (1p). The person is
24 eligible for an occupational license under s. 343.10 at any time. If a person arrested
25 for a violation of this subsection refuses to take a test under s. 343.305, the refusal

1 is a separate violation and the person is subject to revocation of the person's
2 operating privilege under s. 343.305 (10) (em).

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

4 346.65 **(2p)** Any person violating s. 346.63 (2g) shall forfeit \$100.

5 **SECTION 14.** 349.03 (2m) of the statutes is amended to read:

6 349.03 **(2m)** Notwithstanding sub. (2), a municipal court may suspend a license
7 for a violation of a local ordinance in conformity with s. 346.63 (1), (2g) or (2m).

8 **SECTION 15.** 349.06 (1m) of the statutes is amended to read:

9 349.06 **(1m)** Notwithstanding sub. (1), a municipal court may suspend a license
10 for a violation of a local ordinance in conformity with s. 346.63 (1), (2g) or (2m).

11 **SECTION 16. Initial applicability.**

12 (1) This act first applies to offenses committed on the effective date of this
13 subsection, but does not preclude the counting of other offenses as prior offenses for
14 sentencing a person or suspending or revoking a person's operating privilege.

15 **SECTION 17. Effective date.**

16 (1) This act takes effect on the first day of the 4th month beginning after
17 publication.

18 (END)