

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3047/P/ins <sup>2</sup>  
PJH:.....

1 INSERT A:

2 SECTION #. 340.01 (5u) of the statutes is created to read:

3 340.01 (5u) "Bodily harm" means physical pain or injury, illness, or any  
4 impairment of physical condition.

5 340.01 (19d) of the statutes is created to read:

6 SEC. #.  
340.01 (19d) "Great bodily harm" means bodily injury which creates a  
7 substantial risk of death, or which causes serious permanent disfigurement, or  
8 which causes a permanent or protracted loss or impairment of the function of any  
9 bodily member or organ or other serious bodily injury.

NOTE: This <sup>CS</sup>section creates definitions for "bodily harm" and "great bodily harm,"  
using definitions currently set forth in ~~sections~~ 939.22 (4) and (14).

10 INSERT B:

11 SECTION #. 343.30 (1g) (a) of the statutes is amended to read:

12 343.30 (1g) (a) Except as provided in par. ~~(b)~~ <sup>strike</sup> ~~and (c)~~ <sup>strike</sup>, a court may  
13 suspend a person's operating privilege for any period not exceeding 6 months upon  
14 the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in  
15 conformity therewith.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979  
c. 221, 300, 351, 353, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 s. 23m to 26, 32; 1983 a. 192; 1985 a. 30, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989  
a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; s. 13.93  
(2) (c).

16 SECTION #. 343.30 (1g) (b) of the statutes is amended to read:

17 343.30 (1g) (b) <sup>strike</sup> ~~Except as provided in par. (c),~~ a court shall revoke a person's  
18 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or  
19 (d) or a local ordinance in conformity therewith if the person has been convicted of  
20 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under s.  
21 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the

1 5-year period preceding the violation. The revocation shall be for a period of 6  
2 months, unless the court orders a period of revocation of less than 6 months and  
3 places its reasons for ordering the lesser period of revocation on the record.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; s. 13.93 (2) (c).

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

5 343.30 (1g) (c) A court shall suspend a person's operating privilege upon the  
6 person's conviction under s. 343.44 for violating s. 343.10 (5) (a) 3. or under s.  
7 347.413. The revocation shall be for a period of not less than 6 months nor more than  
8 9 months. If a person is convicted under s. 347.413, the person is eligible for an  
9 occupational license at any time.

10 INSERT C: ✓

11 343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the  
12 law enforcement officer shall immediately take possession of the person's license and  
13 prepare a notice of intent to revoke, by court order under sub. (10), the person's  
14 operating privilege. If the person was driving or operating a commercial motor  
15 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours  
16 after the refusal and notify the department in the manner prescribed by the  
17 department. The officer shall issue a copy of the notice of intent to revoke the  
18 privilege to the person and submit or mail a copy with the person's license to the clerk  
19 of the circuit court for the county in which the arrest under sub. (3) (a) was made.  
20 The officer shall also mail a copy of the notice of intent to revoke to the district  
21 attorney for that county and the department. The notice of intent to revoke the

1 person's operating privilege shall contain substantially all of the following  
2 information:

3 History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109.

4 INSERT D: ✓

5 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
6 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law  
7 enforcement officer shall immediately take possession of the person's license, issue  
8 an out-of-service order to the person for the 24 hours after the refusal and notify the  
9 department in the manner prescribed by the department, and prepare a notice of  
10 intent to revoke, by court order under sub. (10), the person's operating privilege. The  
11 officer shall issue a copy of the notice of intent to revoke the privilege to the person  
12 and submit or mail a copy with the person's license to the clerk of the circuit court  
13 for the county in which the refusal is made. The officer shall also mail a copy of the  
14 notice of intent to revoke to the district attorney for that county and the department.  
15 The notice of intent to revoke the person's operating privilege shall contain  
16 substantially all of the following information:

17 History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109.

17 INSERT E:

18 SECTION #. 346.17 (3) (b) of the statutes is amended to read:

19 346.17 (3) (b) If the violation results in bodily harm, ~~as defined in s. 939.22 (4),~~  
20 to another, or causes damage to the property of another, as defined in s. 939.22 (28),  
21 the person shall be fined not less than \$1,000 nor more than \$10,000 and may be  
22 imprisoned for not more than 3 years.

23 History: 1971 c. 278; 1973 c. 182; 1977 c. 208; 1981 c. 324; 1983 a. 27; 1985 a. 82; 1993 a. 189, 198; 1997 a. 32, 88, 237, 277, 283.

23 SECTION #. 346.17 (3) (c) of the statutes is amended to read:

1 346.17 (3) (c) If the violation results in great bodily harm, as defined in s. 939.22  
2 (14), to another, the person shall be fined not less than \$1,100 nor more than \$10,000  
3 and may be imprisoned for not more than 3 years.

4 History: 1971 c. 278; 1973 c. 182; 1977 c. 208; 1981 c. 324; 1983 a. 27; 1985 a. 82; 1993 a. 189, 198; 1997 a. 32, 88, 237, 277, 283.

5 INSERT F:

6 SECTION #. 346.63 (1) of the statutes is amended to read:

7 346.63 (1) No person may drive or operate a motor vehicle while:

8 (a) Under the influence of an intoxicant, ~~a controlled substance, a controlled~~  
9 ~~substance analog or any combination of an intoxicant, a controlled substance and a~~  
10 ~~controlled substance analog, under the influence of any other drug to a degree which~~  
11 ~~renders him or her incapable of safely driving, or under the combined influence of an~~  
12 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
13 ~~safely driving; or~~ A violation of this paragraph is not an included offense of s. 346.63

14 (2), 940.09 (1), or 940.25 (1) plain

15 (b) The person has a prohibited alcohol concentration. A violation of this  
16 paragraph is not an included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).

17 History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85.

18 SECTION #. 346.63 (1) (c) of the statutes is repealed.

19 INSERT G:

20 SECTION #. 346.65 (2) (f) of the statutes is renumbered 346.65 (2) (f) 1. and  
21 amended to read:

22 346.65 (2) (f) 1. If there was a minor passenger under 16 years of age in the  
23 motor vehicle at the time of the violation that gave rise to the conviction under s.  
24 346.63 (1), the applicable minimum and maximum forfeitures, fines, or  
imprisonment under par. (a), (b), (c), (d), or (e) for the conviction are doubled. The

1 doubling of fines under this subdivision does not apply if the person convicted is  
2 subject to par. (g).

3 2. An offense under s. 346.63 (1) that subjects a person to a penalty under par.  
4 (c), (d), or (e) when there is a minor passenger under 16 years of age in the motor  
5 vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109.

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3047/P2ins  
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INS. 5-25

SECTION 1. 343.30 (1q) (d) of the statutes, as affected by ~~2001 Wisconsin Act~~  
1997 Wisconsin Act 84, is amended to read:

343.30 (1q) (d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse, or dependence on alcohol, ~~controlled substances or controlled substance analogs~~ an intoxicant, or attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and with treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42, and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the department is notified of any noncompliance, other than for nonpayment of the assessment fee or driver safety plan fee, it shall revoke the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the

assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person's operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs first. The department shall notify the person of the suspension or revocation, the reason for the suspension or revocation, and the person's right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and, if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

**History:** 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; 2001 a. 15; s. 13.93 (2) (c).

P3  
fmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

10-12-01

D-note

Gen. Cat.

1 AN ACT *to repeal* 346.62 (1) (a) and (b), 346.63 (1) (c), 885.235 (1) (bd) and (c) and  
2 967.055 (1m); *to renumber and amend* 343.303 and 346.65 (2) (f); *to amend*  
3 343.10 (8) (intro.), 343.16 (5) (a), 343.30 (1g) (a), 343.30 (1g) (b), 343.30 (1q) (c)  
4 1. (intro.), 343.30 (1q) (d), 343.30 (1q) (h), 343.305 (2), (3) (am) and (b), (4) (form)  
5 and (5) (b), 343.305 (6) (a), 343.305 (9) (a) (intro.) and 4., 343.305 (9) (a) 5. a. and  
6 c., 343.305 (9) (am) (intro.) and 4., 343.305 (9) (am) 5. a. and c., 343.305 (9) (c),  
7 343.305 (10) (c) 1. (intro.), 343.305 (10) (d), 343.307 (1) (d), 343.31 (1) (am) and  
8 (ar), 343.31 (1) (b), 343.31 (2) and (3) (b), 343.315 (2) (a) 1. and 6., 343.44 (1) (a)  
9 and (b), 344.576 (2) (b) and (c), 345.24 (1), 346.17 (3) (b), 346.17 (3) (c), 346.61,  
10 346.63 (title), 346.63 (1) (a) and (b), 346.63 (2) (a) (intro.) and 1. and (b), 346.63  
11 (6) (a) and (c), 346.637 (1) and (2), 346.65 (2) (e), 346.65 (2g) (b) and (c) and (2i),  
12 346.65 (2q) and (2u) (a), 346.65 (3m) and (7), 346.66, 885.235 (1g) (a), 949.08 (2)  
13 (e) and (em), 967.055 (title) and (1) and 967.055 (2); *to repeal and recreate*  
14 343.305 (5) (d), 885.235 (1) (b) and 939.22 (42); and *to create* 340.01 (5u), 340.01  
15 (19d), 340.01 (25d) and (73e), 343.30 (1g) (c), 343.305 (5) (e), 346.65 (8), 800.08



1 (5) and 939.22 (19m) of the statutes; **relating to:** intoxicated operation of a  
2 motor vehicle and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

For further information see the ***state and local*** 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:***

PREFATORY NOTE: This bill was prepared for the special committee on recodification of operating while intoxicated and safety laws pertaining to motor vehicle, all-terrain vehicle, boat or snowmobile operation. The special committee was directed to study current statutes relating to operating a vehicle while under the influence of an intoxicant or drug and to reorganize, simplify, modernize and clarify these statutes and make minor substantive changes necessary to effect these goals. In addition, the special committee was directed to study, with respect to an all-terrain vehicle, a boat or a snowmobile, whether enforcement mechanisms need to be increased or created to ensure compliance with the law.

This bill creates a definition of the terms “intoxicant” and “under the influence of an intoxicant” for use in the motor vehicle code. Most of the SECTIONS of this bill are concerned with the use of these terms and a description of this issue can be found in the note following SECTION 1 of the bill. Other changes to the statutes made in the bill are identified in notes to the provisions affected.

3 SECTION 1. 340.01 (5u) of the statutes is created to read:

4 340.01 (5u) “Bodily harm” means physical pain or injury, illness, or any  
5 impairment of physical condition.

6 SECTION 2. 340.01 (19d) of the statutes is created to read:

7 340.01 (19d) “Great bodily harm” means bodily injury which creates a  
8 substantial risk of death, or which causes serious permanent disfigurement, or  
9 which causes a permanent or protracted loss or impairment of the function of any  
10 bodily member or organ or other serious bodily injury.

NOTE: This SECTION creates definitions for “bodily harm” and “great bodily harm,” using definitions currently set forth in s. 939.22 (4) and (14).

11 SECTION 3. 340.01 (25d) and (73e) of the statutes are created to read:

12 340.01 (25d) “Intoxicant” means any of the following:

1 (a) Alcohol, a controlled substance, a controlled substance analog, any other  
2 drug, or a vapor-releasing substance.

3 (b) Any combination of alcohol, a controlled substance, a controlled substance  
4 analog, any other drug, or a vapor-releasing substance.

5 (73e) "Under the influence of an intoxicant" means a condition in which a  
6 person's ability to operate a motor vehicle, because of the consumption of an  
7 intoxicant, is impaired to the extent that the person is less able to exercise the clear  
8 judgment and steady hand necessary to handle and control a motor vehicle.

NOTE: Current law treats the issue of operating a motor vehicle while intoxicated using various terms, often inconsistently. The terms used are "intoxicant", "alcohol", "controlled substance", "controlled substance analog" and "other drug". In the following sections of the statutes, the terms "alcohol", "a controlled substance" and "controlled substance analog" are used: ss. 343.10, 343.16, 343.30, 343.305, 343.44 and 346.637, stats. Other sections of the statutes make use of these terms plus the term "other drug": ss. 343.303, 343.305, 343.31, 343.315, 343.63, 344.576 and 346.65, stats. In addition, the term "intoxicant" is intermittently used.

This SECTION creates a definition of the term "intoxicant" to mean any of the following:

1. Alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.
2. Any combination of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

The use of the definition of the term "intoxicant" in the statutes will indicate consistently that a person may be considered intoxicated due to the individual impacts or the combined impacts of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

Another issue presented by this bill is the meaning of the phrase "operating a motor vehicle while under the influence". For example, s. 343.305 (9) (a) 5., states in part:

Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a controlled substance analog or any combination of alcohol, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving.

It appears from the above-cited section of the statutes that the phrase "to a degree which renders the person incapable of safely driving" applies only to a person acting under the influence of "any other drug" or "alcohol and any other drug".

Wisconsin criminal jury instructions state that the phrase "under the influence of an intoxicant" means that a driver's ability to operate a vehicle is impaired because of the consumption of an alcoholic beverage. "Not every person who has consumed alcoholic beverages is 'under the influence' as that term is used here. What must be established is that the person has consumed a sufficient amount of alcohol to cause him to be less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle. It is not required that impaired ability to operate be demonstrated by particular

acts of unsafe driving. What is required is that the person's ability to safely control his vehicle be impaired". [See WIS JI-CRIMINAL s. 2663.]

With respect to operating a motor vehicle while under the influence of a drug, the Wisconsin criminal jury instructions state that one element of this offense requires that the defendant drove or operated a motor vehicle while under the influence of a drug to a degree which rendered the defendant incapable of safely driving. [See WI JI-CRIMINAL s. 2066.]

This bill creates a definition of the term "under the influence of an intoxicant" by codifying the language of WI JI-CRIMINAL s. 2663. Rather than using 2 standards, as under current law, the bill applies the definition to the operation of a motor vehicle when the consumption of any intoxicant is involved. Again, the term "intoxicant" is defined to mean alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance or any combination of these items.

1           **SECTION 4.** 343.10 (8) (intro.) of the statutes is amended to read:

2           **343.10 (8) VIOLATION OF RESTRICTIONS.** (intro.) Any person who violates a  
3 restriction on an occupational license as to hours of the day, area, routes or purpose  
4 of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety,  
5 or use of alcohol, ~~controlled substances or controlled substance analogs~~ an intoxicant  
6 shall be:

7           **SECTION 5.** 343.16 (5) (a) of the statutes, as affected by 1997 Wisconsin Act 84,  
8 is amended to read:

9           **343.16 (5) (a)** The secretary may require any applicant for a license or any  
10 licensed operator to submit to a special examination by such persons or agencies as  
11 the secretary may direct to determine incompetency, physical or mental disability,  
12 disease, or any other condition which might prevent such applicant or licensed  
13 person from exercising reasonable and ordinary control over a motor vehicle. When  
14 the department requires the applicant to submit to an examination, the applicant  
15 shall pay the cost thereof. If the department receives an application for a renewal  
16 or duplicate license after voluntary surrender under s. 343.265 or receives a report  
17 from a physician or optometrist under s. 146.82 (3), or if the department has a report  
18 of 2 or more arrests within a one-year period for any combination of violations of s.

1 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally  
2 recognized American Indian tribe or band in this state in conformity with s. 346.63  
3 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09  
4 where the offense involved the use of a vehicle, the department shall determine, by  
5 interview or otherwise, whether the operator should submit to an examination under  
6 this section. The examination may consist of an assessment. If the examination  
7 indicates that education or treatment for a disability, disease, or condition  
8 concerning the use of alcohol, a controlled substance or a controlled substance analog  
9 an intoxicant is appropriate, the department may order a driver safety plan in  
10 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the  
11 driver safety plan, the department shall revoke the person's operating privilege in  
12 the manner specified in s. 343.30 (1q) (d).

13 **SECTION 6.** 343.30 (1g) (a) of the statutes is amended to read:

14 343.30 (1g) (a) Except as provided in ~~par.~~ pars. (b) and (c), a court may suspend  
15 a person's operating privilege for any period not exceeding 6 months upon the  
16 person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in  
17 conformity therewith.

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

19 343.30 (1g) (b) ~~A- Except as provided in par. (c), a~~ court shall 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 revocation shall be for a period of 6

1 months, unless the court orders a period of revocation of less than 6 months and  
2 places its reasons for ordering the lesser period of revocation on the record.

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

4 343.30 (1g) (c) A court shall suspend a person's operating privilege upon the  
5 person's conviction under s. 343.44 for violating s. 343.10 (5) (a) 3. or under s.  
6 347.413. The revocation shall be for a period of not less than 6 months nor more than  
9 months. If a person is convicted under s. 347.413, the person is eligible for an  
occupational license at any time.

7 **SECTION 9.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

8 **343.30 (1q) (c) 1. (intro.)** Except as provided in subd. 1. a. or b., the court shall  
10 order the person to submit to and comply with an assessment by an approved public  
11 treatment facility, as defined in s. 51.45 (2) (c), for examination of the person's use  
12 of alcohol, ~~controlled substances or controlled substance analogs~~ an intoxicant and  
13 development of a driver safety plan for the person. The court shall notify the  
14 department of transportation of the assessment order. The court shall notify the  
15 person that noncompliance with assessment or the driver safety plan will result in  
16 revocation of the person's operating privilege until the person is in compliance. The  
17 assessment order shall:  
18

19 **SECTION 10.** 343.30 (1q) (d) of the statutes, as affected by 1997 Wisconsin Act  
20 84, is amended to read:

21 343.30 (1q) (d) The assessment report shall order compliance with a driver  
22 safety plan. The report shall inform the person of the fee provisions under s. 46.03  
23 (18) (f). The driver safety plan may include a component that makes the person  
24 aware of the effect of his or her offense on a victim and a victim's family. The driver  
25 safety plan may include treatment for the person's misuse, abuse, or dependence on

Insert  
6.8.8

1 ~~alcohol, controlled substances or controlled substance analogs~~ an intoxicant, or  
2 attendance at a school under s. 345.60, or both. If the plan requires inpatient  
3 treatment, the treatment shall not exceed 30 days. A driver safety plan under this  
4 paragraph shall include a termination date consistent with the plan which shall not  
5 extend beyond one year. The county department under s. 51.42 shall assure  
6 notification of the department of transportation and the person of the person's  
7 compliance or noncompliance with assessment and with treatment. The school  
8 under s. 345.60 shall notify the department, the county department under s. 51.42,  
9 and the person of the person's compliance or noncompliance with the requirements  
10 of the school. Nonpayment of the assessment fee or, if the person has the ability to  
11 pay, nonpayment of the driver safety plan fee is noncompliance with the court order.  
12 If the department is notified of any noncompliance, other than for nonpayment of the  
13 assessment fee or driver safety plan fee, it shall revoke the person's operating  
14 privilege until the county department under s. 51.42 or the school under s. 345.60  
15 notifies the department that the person is in compliance with assessment or the  
16 driver safety plan. If the department is notified that a person has not paid the  
17 assessment fee, or that a person with the ability to pay has not paid the driver safety  
18 plan fee, the department shall suspend the person's operating privilege for a period  
19 of 2 years or until it receives notice that the person has paid the fee, whichever occurs  
20 first. The department shall notify the person of the suspension or revocation, the  
21 reason for the suspension or revocation, and the person's right to a review. A person  
22 may request a review of a revocation based upon failure to comply with a driver safety  
23 plan within 10 days of notification. The review shall be handled by the subunit of  
24 the department of transportation designated by the secretary. The issues at the  
25 review are limited to whether the driver safety plan, if challenged, is appropriate and

1 whether the person is in compliance with the assessment order or the driver safety  
2 plan. The review shall be conducted within 10 days after a request is received. If the  
3 driver safety plan is determined to be inappropriate, the department shall order a  
4 reassessment and, if the person is otherwise eligible, the department shall reinstate  
5 the person's operating privilege. If the person is determined to be in compliance with  
6 the assessment or driver safety plan, and if the person is otherwise eligible, the  
7 department shall reinstate the person's operating privilege. If there is no decision  
8 within the 10-day period, the department shall issue an order reinstating the  
9 person's operating privilege until the review is completed, unless the delay is at the  
10 request of the person seeking the review.

11 SECTION 11. 343.30 (1q) (h) of the statutes is amended to read:

12 343.30 (1q) (h) The court or department shall provide that the period of  
13 suspension or revocation imposed under this subsection shall be reduced by any  
14 period of suspension or revocation previously served under s. 343.305 if the  
15 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63  
16 (1) or (2m) or a local ordinance in conformity therewith arise out of the same incident  
17 or occurrence. The court or department shall order that the period of suspension or  
18 revocation imposed under this subsection run concurrently with any period of time  
19 remaining on a suspension or revocation imposed under s. 343.305 arising out of the  
20 same incident or occurrence. The court or department shall order that any period  
21 of time that must expire before a person is eligible for an occupational license under  
22 this subsection be reduced by any similar period previously expired under s. 343.305  
23 if the suspension or revocation under s. 343.305 and the conviction for violation of  
24 s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same  
25 incident or occurrence. The court or department shall order that any period of time

1 that must expire before a person is eligible for an occupational license under this  
2 subsection run concurrently with any similar period of time remaining under s.  
3 343.305 arising out of the same incident or occurrence. The court may modify an  
4 occupational license authorized under s. 343.305 (8) (d) in accordance with this  
5 subsection.

NOTE: Section 343.30 (1q) (b), stats., provides that a person who is convicted of driving or operating a motor vehicle while under the influence of an intoxicant or other drug or while maintaining a prohibited alcohol concentration will be subject to revocation of the person's operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license. Similarly, s. 343.305 (10) (b), stats., provides that a person who improperly refuses to take a test to determine the presence of alcohol or other drugs will be subject to a revocation of the person's operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license. This SECTION provides that, for a conviction and a refusal that arise out of the same incident or occurrence, the periods of time within which a person will not be eligible for an occupational license will run concurrently or, if an eligibility period has begun to run for a refusal, the latter period will operate as an offset to the period of ineligibility under s. 343.30, stats.

6 SECTION 12. 343.303 of the statutes is renumbered 343.303 (1) (intro.) and  
7 amended to read:

8 343.303 (1) (intro.) ~~If a~~ A law enforcement officer has ~~probable cause to believe,~~  
9 prior to an arrest, may request a person to provide a sample of his or her breath for  
10 a preliminary breath screening test using a device approved by the department for  
11 this purpose if any of the following conditions exists:

12 (a) The law enforcement officer has reasonable suspicion that the person is  
13 violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity  
14 therewith, or s. 346.63 (2) or (6) ~~or, 940.09 (1), or 940.25 or s. 940.09 where the offense~~  
15 involved the use of a vehicle, or if the,

16 (b) The law enforcement officer detects any presence of alcohol, a controlled  
17 substance, controlled substance analog or other drug, or a combination thereof, an



1 intoxicant on a person driving or operating or on duty time with respect to a  
2 commercial motor vehicle ~~or.~~

3 (c) The law enforcement officer has reason to believe that the person is violating  
4 or has violated s. 346.63 (7) or a local ordinance in conformity therewith, ~~the officer,~~  
5 ~~prior to an arrest, may request the person to provide a sample of his or her breath~~  
6 ~~for a preliminary breath screening test using a device approved by the department~~  
7 ~~for this purpose.~~

8 (2) The result of ~~this~~ the preliminary breath screening test under sub. (1) may  
9 be used by the law enforcement officer for the purpose of deciding whether or not the  
10 person shall be arrested for a violation of s. 346.63 (1), (2m), (5), or (7) or a local  
11 ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1), or 940.25 and  
12 whether or not to require or request chemical tests as authorized under s. 343.305  
13 (3).

14 (3) The result of the preliminary breath screening test under sub. (1) shall not  
15 be admissible in any action or proceeding except to show probable cause for an arrest,  
16 if the arrest is challenged, to show the presence of an intoxicant in a person's breath,  
17 blood, or urine, or to prove that a chemical test was properly required or requested  
18 of a person under s. 343.305 (3). Following the screening test, additional tests may  
19 be required or requested of the driver under s. 343.305 (3).

20 (4) The general penalty provision under s. 939.61 (1) does not apply to a refusal  
21 to take a preliminary breath screening test under this section.

NOTE: This SECTION reorganizes s. 343.303 and provides that a law enforcement officer may require a preliminary breath screening test if there is a reasonable suspicion, rather than probable cause to believe, that a violation has occurred. This change is based on the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999).

In addition, current law provides that a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested.

This SECTION provides that the result of the preliminary breath screening test also may be used as evidence of the presence of an intoxicant in a ~~person~~ <sup>person's breath, blood, or urine;</sup> that is, the result of the test is admissible for the purpose of providing evidence of the existence of an intoxicant but not for the purpose of providing evidence of the amount of an intoxicant.

1           **SECTION 13.** 343.305 (2), (3) (am) and (b), (4) (form) and (5) (b) of the statutes  
2 are amended to read:

3           **343.305 (2) IMPLIED CONSENT.** Any person who is on duty time with respect to  
4 a commercial motor vehicle or drives or operates a motor vehicle upon the public  
5 highways of this state, or in those areas enumerated in s. 346.61, is deemed to have  
6 given consent to one or more tests of his or her breath, blood, or urine, for the purpose  
7 of determining the presence or quantity of an intoxicant in his or her ~~blood or breath,~~  
8 ~~of alcohol, controlled substances, controlled substance analogs or other drugs, or any~~  
9 ~~combination of alcohol, controlled substances, controlled substance analogs and~~  
10 ~~other drugs~~ breath, blood, or urine, when requested to do so by a law enforcement  
11 officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (b). Any such  
12 tests shall be administered upon the request of a law enforcement officer. The law  
13 enforcement agency by which the officer is employed shall be prepared to administer,  
14 either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a)  
15 or (am), and may designate which of the tests shall be administered first.

16           **(3) (am)** Prior to arrest, a law enforcement officer may request the person to  
17 provide one or more samples of his or her breath, blood, or urine for the purpose  
18 specified under sub. (2) whenever a law enforcement officer detects any presence of  
19 ~~alcohol, a controlled substance, a controlled substance analog or other drug, or a~~  
20 ~~combination thereof,~~ an intoxicant on a person driving or operating or on duty time  
21 with respect to a commercial motor vehicle or has reason to believe the person is  
22 violating or has violated s. 346.63 (7). Compliance with a request for one type of  
23 sample does not bar a subsequent request for a different type of sample. For the

1 purposes of this paragraph, "law enforcement officer" includes inspectors in the  
2 performance of duties under s. 110.07 (3).

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

13 (4) (form)

14 "You have either been arrested for an offense that involves driving or operating  
15 a motor vehicle while under the influence of ~~alcohol or drugs, or both~~ an intoxicant,  
16 or you are suspected of driving or being on duty time with respect to a commercial  
17 motor vehicle after consuming an intoxicating beverage.

18 This law enforcement agency now wants to test one or more samples of your  
19 breath, blood, or urine to determine the concentration of ~~alcohol or drugs~~ an  
20 intoxicant in your system. If any test shows more alcohol in your system than the law  
21 permits while driving, your operating privilege will be suspended. If you refuse to  
22 take any test that this agency requests, your operating privilege will be revoked and  
23 you will be subject to other penalties. The test results or the fact that you refused  
24 testing can be used against you in court. The law does not provide you with a right  
25 to contact an attorney before submitting to a chemical test.

1           If you take all of the requested tests, you may choose to take further tests. You  
2 may take the alternative test that this law enforcement agency provides free of  
3 charge. You also may have a test conducted by a qualified person of your choice at  
4 your expense. You, however, will have to make your own arrangements for that test.

5           If you have a commercial driver license or were operating a commercial motor  
6 vehicle, other consequences may result from positive test results or from refusing  
7 testing, such as being placed out of service or disqualified.”

8           (5) (b) Blood may be withdrawn from the person arrested for violation of s.  
9 346.63 (1), (2), (2m), (5), or (6) or 940.25, or s. 940.09 where the offense involved the  
10 use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), or (5), or  
11 as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol,  
12 ~~a controlled substance, a controlled substance analog or any other drug, or any~~  
13 ~~combination of alcohol, controlled substance, controlled substance analog and any~~  
14 ~~other drug~~ an intoxicant in the blood only by a physician, registered nurse, medical  
15 technologist, physician assistant, or person acting under the direction of a physician.

NOTE: Section 343.305 (4), stats., requires that a law enforcement officer provide a person specified notifications at the time that a chemical test specimen is requested. This SECTION adds to the notice a provision that when a chemical test specimen is requested, the person to be tested does not have the right to contact an attorney prior to testing.

16           **SECTION 14.** 343.305 (5) (d) of the statutes is repealed and recreated to read:

17           343.305 (5) (d) The results of a test administered in accordance with this  
18 section are admissible on the issue of whether a person was under the influence of  
19 an intoxicant or any issue relating to the person’s alcohol concentration in a civil or  
20 criminal proceeding in which the person is alleged to have done any of the following:

21           1. Driven or operated a motor vehicle while under the influence of an  
22 intoxicant.

1           2. Had a prohibited alcohol concentration.

2           3. Driven or operated or been on duty time with respect to a commercial motor  
3 vehicle in violation of s. 346.63 (7).

4           **SECTION 15.** 343.305 (5) (e) of the statutes is created to read:

5           343.305 (5) (e) Test results under this section shall be given the effect required  
6 under s. 885.235.

7           **SECTION 16.** 343.305 (6) (a) of the statutes is amended to read:

8           343.305 (6) (a) Chemical analyses of blood or urine to be considered valid under  
9 this section shall have been performed substantially according to methods approved  
10 by the laboratory of hygiene and by an individual possessing a valid permit to  
11 perform the analyses issued by the department of health and family services. The  
12 department of health and family services shall approve laboratories for the purpose  
13 of performing chemical analyses of blood or urine for ~~alcohol, controlled substances~~  
14 ~~or controlled substance analogs~~ an intoxicant and shall develop and administer a  
15 program for regular monitoring of the laboratories. A list of approved laboratories  
16 shall be provided to all law enforcement agencies in the state. Urine specimens are  
17 to be collected by methods specified by the laboratory of hygiene. The laboratory of  
18 hygiene shall furnish an ample supply of urine and blood specimen containers to  
19 permit all law enforcement officers to comply with the requirements of this section.

20           **SECTION 17.** 343.305 (9) (a) (intro.) and 4. of the statutes are amended to read:

21           343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the  
22 law enforcement officer shall immediately take possession of the person's license and  
23 prepare a notice of intent to revoke, by court order under sub. (10), the person's  
24 operating privilege. If the person was driving or operating a commercial motor  
25 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours

1 after the refusal and notify the department in the manner prescribed by the  
2 department. The officer shall issue a copy of the notice of intent to revoke the  
3 privilege to the person and submit or mail a copy with the person's license to the clerk  
4 of the circuit court for the county in which the arrest under sub. (3) (a) was made.  
5 The officer shall also mail a copy of the notice of intent to revoke to the district  
6 attorney for that county and the department. The notice of intent to revoke the  
7 person's operating privilege shall contain substantially all of the following  
8 information:

9 4. That the person may request a hearing on the revocation within 10 days by  
10 mailing or delivering a written request to the clerk of the appropriate circuit court  
11 whose address is specified in the notice. If no request for a hearing is received within  
12 the 10-day period, the revocation period commences 30 days after the notice is  
13 issued.

14 **SECTION 18.** 343.305 (9) (a) 5. a. and c. of the statutes are amended to read:

15 343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the  
16 person was driving or operating a motor vehicle while under the influence of alcohol,  
17 ~~a controlled substance or a controlled substance analog or any combination of~~  
18 ~~alcohol, a controlled substance and a controlled substance analog, under the~~  
19 ~~influence of any other drug to a degree which renders the person incapable of safely~~  
20 ~~driving, or under the combined influence of alcohol and any other drug to a degree~~  
21 ~~which renders the person incapable of safely driving~~ an intoxicant or having a  
22 prohibited alcohol concentration or, if the person was driving or operating a  
23 commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the  
24 person was lawfully placed under arrest for violation of s. 346.63 (1), (2m), or (5) or  
25 a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1), or 940.25.

1           c. Whether the person refused to permit the test. The person shall not be  
2 considered to have refused the test if it is shown by a preponderance of evidence that  
3 the refusal was due to a physical inability to submit to the test due to a physical  
4 disability or disease unrelated to the use of ~~alcohol, controlled substances, controlled~~  
5 ~~substance analogs or other drugs~~ an intoxicant.

6           **SECTION 19.** 343.305 (9) (am) (intro.) and 4. of the statutes are amended to read:

7           343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
8 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law  
9 enforcement officer shall immediately take possession of the person's license, issue  
10 an out-of-service order to the person for the 24 hours after the refusal and notify the  
11 department in the manner prescribed by the department, and prepare a notice of  
12 intent to revoke, by court order under sub. (10), the person's operating privilege. The  
13 officer shall issue a copy of the notice of intent to revoke the privilege to the person  
14 and submit or mail a copy with the person's license to the clerk of the circuit court  
15 for the county in which the refusal is made. The officer shall also mail a copy of the  
16 notice of intent to revoke to the district attorney for that county and the department.  
17 The notice of intent to revoke the person's operating privilege shall contain  
18 substantially all of the following information:

19           4. That the person may request a hearing on the revocation within 10 days by  
20 mailing or delivering a written request to the clerk of the appropriate circuit court  
21 whose address is specified in the notice. If no request for a hearing is received within  
22 the 10-day period, the revocation period commences 30 days after the notice is  
23 issued.

24           **SECTION 20.** 343.305 (9) (am) 5. a. and c. of the statutes are amended to read:

1           343.305 (9) (am) 5. a. Whether the officer detected any presence of alcohol,  
2 ~~controlled substance, controlled substance analog or other drug, or a combination~~  
3 ~~thereof,~~ an intoxicant on the person or had reason to believe that the person was  
4 violating or had violated s. 346.63 (7).

5           c. Whether the person refused to permit the test. The person shall not be  
6 considered to have refused the test if it is shown by a preponderance of evidence that  
7 the refusal was due to a physical inability to submit to the test due to a physical  
8 disability or disease unrelated to the use of ~~alcohol, controlled substances, controlled~~  
9 ~~substance analogs or other drugs~~ an intoxicant.

10           **SECTION 21.** 343.305 (9) (c) of the statutes is amended to read:

11           343.305 (9) (c) If a law enforcement officer informs the circuit court that a  
12 person has refused to submit to a test under sub. (3) (a) or (am), the court shall be  
13 prepared to hold any requested hearing to determine if the refusal was proper. The  
14 scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5.  
15 Neither party is entitled to pretrial discovery. Section 967.055 applies to any hearing  
16 under this subsection.

NOTE: SECTIONS 17 to 20 amend s. 343.305 (9) (a) and (am), stats., to clarify that  
the notice of intent to revoke a person's operating privilege must include the address of  
the clerk of the appropriate circuit court that may hold a revocation hearing. The  
amendment to s. 343.305 (9) (c), stats., clarifies that pretrial discovery is not available in  
a refusal hearing. This amendment reverses the holding in *State v. Schoepp*, 204 Wis. 2d  
266 (Ct. App. 1996).

17           **SECTION 22.** 343.305 (10) (c) 1. (intro.) of the statutes is amended to read:

18           343.305 (10) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall  
19 order the person to submit to and comply with an assessment by an approved public  
20 treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of  
21 ~~alcohol, controlled substances or controlled substance analogs~~ an intoxicant and  
22 development of a driver safety plan for the person. The court shall notify the person



1 and the department of transportation of the assessment order. The court shall also  
2 notify the person that noncompliance with assessment or the driver safety plan will  
3 result in license suspension until the person is in compliance. The assessment order  
4 shall:

5 SECTION 23. 343.305 (10) (d) of the statutes, as affected by 1997 Wisconsin Act  
6 84, is amended to read:

7 343.305 (10) (d) The assessment report shall order compliance with a driver  
8 safety plan. The report shall inform the person of the fee provisions under s. 46.03  
9 (18) (f). The driver safety plan may include a component that makes the person  
10 aware of the effect of his or her offense on a victim and a victim's family. The driver  
11 safety plan may include treatment for the person's misuse, abuse, or dependence on  
12 ~~alcohol, controlled substances or controlled substance analogs,~~ an intoxicant or  
13 attendance at a school under s. 345.60, or both. If the plan requires inpatient  
14 treatment, the treatment shall not exceed 30 days. A driver safety plan under this  
15 paragraph shall include a termination date consistent with the plan which shall not  
16 extend beyond one year. The county department under s. 51.42 shall assure  
17 notification of the department of transportation and the person of the person's  
18 compliance or noncompliance with assessment and treatment. The school under s.  
19 345.60 shall notify the department, the county department under s. 51.42, and the  
20 person of the person's compliance or noncompliance with the requirements of the  
21 school. Nonpayment of the assessment fee or, if the person has the ability to pay,  
22 nonpayment of the driver safety plan fee is noncompliance with the court order. If  
23 the department is notified of noncompliance, other than for nonpayment of the  
24 assessment fee or driver safety plan fee, it shall revoke the person's operating  
25 privilege until the county department under s. 51.42 or the school under s. 345.60

1 notifies the department that the person is in compliance with assessment or the  
2 driver safety plan. If the department is notified that a person has not paid the  
3 assessment fee, or that a person with the ability to pay has not paid the driver safety  
4 plan fee, the department shall suspend the person's operating privilege for a period  
5 of 2 years or until it receives notice that the person has paid the fee, whichever occurs  
6 first. The department shall notify the person of the suspension or revocation, the  
7 reason for the suspension or revocation, and the person's right to a review. A person  
8 may request a review of a revocation based upon failure to comply with a driver safety  
9 plan within 10 days of notification. The review shall be handled by the subunit of  
10 the department of transportation designated by the secretary. The issues at the  
11 review are limited to whether the driver safety plan, if challenged, is appropriate and  
12 whether the person is in compliance with the assessment order or the driver safety  
13 plan. The review shall be conducted within 10 days after a request is received. If the  
14 driver safety plan is determined to be inappropriate, the department shall order a  
15 reassessment and if the person is otherwise eligible, the department shall reinstate  
16 the person's operating privilege. If the person is determined to be in compliance with  
17 the assessment or driver safety plan, and if the person is otherwise eligible, the  
18 department shall reinstate the person's operating privilege. If there is no decision  
19 within the 10-day period, the department shall issue an order reinstating the  
20 person's operating privilege until the review is completed, unless the delay is at the  
21 request of the person seeking the review.

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

23 343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits  
24 refusal of chemical testing or use of a motor vehicle while intoxicated or under the  
25 influence of a ~~controlled substance or controlled substance analog, or a combination~~

1     thereof an intoxicant, or with an excess or specified range of alcohol concentration,  
2     ~~or under the influence of any drug to a degree that renders the person incapable of~~  
3     ~~safely driving~~, as those or substantially similar terms are used in that jurisdiction's  
4     laws.

5             **SECTION 25.** 343.31 (1) (am) and (ar) of the statutes are amended to read:

6             343.31 (1) (am) ~~Injury~~ Bodily harm by the operation of a vehicle while under  
7     the influence of an intoxicant, ~~a controlled substance or a controlled substance~~  
8     ~~analog, or any combination of an intoxicant, a controlled substance and a controlled~~  
9     ~~substance analog, under the influence of any other drug to a degree which renders~~  
10    ~~him or her incapable of safely driving, or under the combined influence of an~~  
11    ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
12    ~~safely driving~~ or while the person has a prohibited alcohol concentration and which  
13    is criminal under s. 346.63 (2).

14            (ar) ~~Injury~~ Bodily harm by the operation of a commercial motor vehicle while  
15    the person has an alcohol concentration of 0.04 or more but less than 0.1 and which  
16    is criminal under s. 346.63 (6).

17            **SECTION 26.** 343.31 (1) (b) of the statutes, as affected by 1997 Wisconsin Act 84,  
18    is amended to read:

19            343.31 (1) (b) Upon conviction for operation of a motor vehicle while under the  
20    influence of an intoxicant, ~~controlled substance, controlled substance analog or a~~  
21    ~~combination thereof, under the influence of any other drug to a degree which renders~~  
22    ~~him or her incapable of safely driving, or under the combined influence of an~~  
23    ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
24    ~~safely driving~~, in accordance with the order of the court.

1           **SECTION 27.** 343.31 (2) and (3) (b) of the statutes, as affected by 1997 Wisconsin  
2 Act 84, are amended to read:

3           **343.31 (2)** The department shall revoke the operating privilege of any resident  
4 upon receiving notice of the conviction of such person in another jurisdiction for an  
5 offense therein which, if committed in this state, would have been cause for  
6 revocation under this section or for revocation under s. 343.30 (1q). Such offenses  
7 shall include violation of any law of another jurisdiction that prohibits use of a motor  
8 vehicle while intoxicated or under the influence of ~~a controlled substance or~~  
9 ~~controlled substance analog, or a combination thereof~~ an intoxicant, or with an  
10 excess or specified range of alcohol concentration, ~~or under the influence of any drug~~  
11 ~~to a degree that renders the person incapable of safely driving~~, as those or  
12 substantially similar terms are used in that jurisdiction's laws. Upon receiving  
13 similar notice with respect to a nonresident, the department shall revoke the  
14 privilege of the nonresident to operate a motor vehicle in this state. Such revocation  
15 shall not apply to the operation of a commercial motor vehicle by a nonresident who  
16 holds a valid commercial driver license issued by another state.

17           **(3) (b)** If the revocation results from a first conviction of operation of a motor  
18 vehicle while under the influence of an intoxicant, ~~controlled substance, controlled~~  
19 ~~substance analog or a combination thereof, under the influence of any other drug to~~  
20 ~~a degree which renders him or her incapable of safely driving, or under the combined~~  
21 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
22 ~~incapable of safely driving~~ and the conviction occurs in another jurisdiction, the  
23 period of revocation shall be 6 months.

24           **SECTION 28.** 343.315 (2) (a) 1. and 6. of the statutes are amended to read:

1           343.315 (2) (a) 1. Section 346.63 (1) (a) or a local ordinance in conformity  
2 therewith or a law of a federally recognized American Indian tribe or band in this  
3 state in conformity with s. 346.63 (1) (a) or the law of another jurisdiction prohibiting  
4 driving or operating a motor vehicle while intoxicated or under the influence of  
5 alcohol, ~~a controlled substance, a controlled substance analog or a combination~~  
6 ~~thereof, or under the influence of any drug which renders the person incapable of~~  
7 ~~safely driving~~ an intoxicant, as those or substantially similar terms are used in that  
8 jurisdiction's laws.

9           6. Section 346.63 (2) or (6), 940.09 (1), or 940.25 or a law of a federally  
10 recognized American Indian tribe or band in this state in conformity with s. 346.63  
11 (2) or (6), 940.09 (1), or 940.25, or the law of another jurisdiction prohibiting causing  
12 or inflicting ~~injury~~ bodily harm, great bodily harm, or death through use of a motor  
13 vehicle while intoxicated or under the influence of alcohol, ~~a controlled substance,~~  
14 ~~a controlled substance analog or a combination thereof~~ an intoxicant, or with an  
15 alcohol concentration of 0.04 or more or with an excess or specified range of alcohol  
16 concentration, ~~or under the influence of any drug to a degree that renders the person~~  
17 ~~incapable of safely driving~~, as those or substantially similar terms are used in that  
18 jurisdiction's laws.

19           **SECTION 29.** 343.44 (1) (a) and (b) of the statutes are amended to read:

20           343.44 (1) (a) *Operating while suspended.* No person whose operating privilege  
21 has been duly suspended under the laws of this state may operate a motor vehicle  
22 upon any highway in this state during the period of suspension or in violation of any  
23 restriction on an occupational license issued to the person during the period of  
24 suspension. A person's knowledge that his or her operating privilege is suspended  
25 is not an element of the offense under this paragraph. In this paragraph, "restriction

1 on an occupational license” means restrictions imposed under s. 343.10 (5) (a) as to  
2 hours of the day, area, routes or purpose of travel, vehicles allowed to be operated,  
3 use of an ignition interlock device, sobriety, or use of alcohol, ~~controlled substances~~  
4 ~~or controlled substance analogs~~ an intoxicant.

5 (b) *Operating while revoked*. No person whose operating privilege has been  
6 duly revoked under the laws of this state may knowingly operate a motor vehicle  
7 upon any highway in this state during the period of revocation or in violation of any  
8 restriction on an occupational license issued to the person during the period of  
9 revocation. In this paragraph, “restriction on an occupational license” means  
10 restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or  
11 purpose of travel, vehicles allowed to be operated, use of an ignition interlock device,  
12 sobriety, or use of alcohol, ~~controlled substances or controlled substance analogs~~ an  
13 intoxicant.

14 **SECTION 30.** 344.576 (2) (b) and (c) of the statutes are amended to read:

15 344.576 (2) (b) The damage occurs while the renter or authorized driver  
16 operates the private passenger vehicle in this state while under the influence of an  
17 intoxicant ~~or other drug~~, as described under s. 346.63 (1) (a) or (b) or (2m).

18 (c) The damage occurs while the renter or authorized driver operates the  
19 private passenger vehicle in another state while under the influence of an intoxicant  
20 ~~or other drug~~, as described in the laws of that state.

21 **SECTION 31.** 345.24 (1) of the statutes is amended to read:

22 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in  
23 conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense  
24 involved the use of a vehicle, may not be released until 12 hours have elapsed from  
25 the time of his or her arrest or unless a chemical test administered under s. 343.305

1 shows that the person has an alcohol concentration of less than ~~0.04~~ 0.02, but the  
2 person may be released to his or her attorney, spouse, relative, or other responsible  
3 adult at any time after arrest.

NOTE: Current law regarding an officer's action after an arrest for driving under the influence of an intoxicant provides that the arrested person must be released when the person has an alcohol concentration less than 0.04. This SECTION amends the statute to provide that the immediate release alcohol concentration level is reduced to less than 0.02.

4 **SECTION 32.** 346.17 (3) (b) of the statutes is amended to read:

5 346.17 (3) (b) If the violation results in bodily harm, ~~as defined in s. 939.22 (4),~~  
6 to another, or causes damage to the property of another, as defined in s. 939.22 (28),  
7 the person shall be fined not less than \$1,000 nor more than \$10,000 and may be  
8 imprisoned for not more than 3 years.

9 **SECTION 33.** 346.17 (3) (c) of the statutes is amended to read:

10 346.17 (3) (c) If the violation results in great bodily harm, ~~as defined in s. 939.22~~  
11 ~~(14),~~ to another, the person shall be fined not less than \$1,100 nor more than \$10,000  
12 and may be imprisoned for not more than 3 years.

13 **SECTION 34.** 346.61 of the statutes is amended to read:

14 **346.61 Applicability of sections relating to reckless and drunken**  
15 **driving.** In addition to being applicable upon highways, ss. 346.62 to 346.64 are  
16 applicable upon all premises ~~held out to the public for use of their motor vehicles, all~~  
17 ~~premises provided by employers to employees for the use of their motor vehicles and~~  
18 ~~all premises provided to tenants of rental housing in buildings of 4 or more units for~~  
19 ~~the use of their motor vehicles, whether such premises are publicly or privately~~  
20 ~~owned and whether or not a fee is charged for the use thereof. Sections 346.62 to~~  
21 ~~346.64 do not apply to private parking areas at farms or single family residences and~~  
22 frozen waters.

NOTE: Section 346.61, stats., provides that statutory provisions relating to reckless and drunken driving are applicable upon highways, all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for their use. An exception exists for private parking areas at farms or single-family residences. This SECTION amends s. 346.61, stats., to provide that the statutes relating to reckless and drunken driving are applicable upon highways, all premises, and frozen waters.

1           **SECTION 35.** 346.62 (1) (a) and (b) of the statutes are repealed.

2           **SECTION 36.** 346.63 (title) of the statutes is amended to read:

3           **346.63 (title) Operating under influence of intoxicant or other drug.**

4           **SECTION 37.** 346.63 (1) (a) and (b) of the statutes are amended to read:

5           346.63 (1) (a) Under the influence of an intoxicant, ~~a controlled substance, a~~  
6 ~~controlled substance analog or any combination of an intoxicant, a controlled~~  
7 ~~substance and a controlled substance analog, under the influence of any other drug~~  
8 ~~to a degree which renders him or her incapable of safely driving, or under the~~  
9 ~~combined influence of an intoxicant and any other drug to a degree which renders~~  
10 ~~him or her incapable of safely driving; or. A violation of this paragraph is not an~~  
11 ~~included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).~~

12           (b) The person has a prohibited alcohol concentration. A violation of this  
13 paragraph is not an included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).

14           ~~**SECTION 38.** 346.63 (1) (c) of the statutes is repealed.~~

15           **SECTION 39.** 346.63 (2) (a) (intro.) and 1. and (b) of the statutes are amended  
16 to read:

17           346.63 (2) (a) (intro.) It is unlawful for any person to cause ~~injury~~ bodily harm  
18 to another person by the operation of a vehicle while:

19           1. Under the influence of an intoxicant, ~~a controlled substance, a controlled~~  
20 ~~substance analog or any combination of an intoxicant, a controlled substance and a~~



1 ~~controlled substance analog, under the influence of any other drug to a degree which~~  
 2 ~~renders him or her incapable of safely driving, or under the combined influence of an~~  
 3 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
 4 ~~safely driving; or~~

5 (b) In an action under this subsection, the defendant has a defense if he or she  
 6 proves by a preponderance of the evidence that the injury ~~bodily harm~~ would have  
 7 occurred even if he or she had been exercising due care and he or she had not been  
 8 under the influence of an intoxicant, ~~a controlled substance, a controlled substance~~  
 9 ~~analog or a combination thereof, under the influence of any other drug to a degree~~  
 10 ~~which renders him or her incapable of safely driving, or under the combined~~  
 11 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
 12 ~~incapable of safely driving or did not have a prohibited alcohol concentration~~  
 13 described under par. (a) 2.

1 ← auto. ref.

NOTE: Section 346.63 (2) and (6), stats., provides that a person may not cause injury while operating a motor vehicle under the influence of an intoxicant or other drug. This SECTION and SECTIONS 25 to 27 also prohibit the causing of bodily harm. The term "bodily harm" is defined in SECTION 26 to mean physical pain or injury, illness or any impairment of physical condition. The definition is adopted from s. 939.22 (4), stats.

This SECTION clarifies that the crime of driving or operating a motor vehicle while under the influence of an intoxicant or with a prohibited alcohol concentration is not an included offense of the following crimes: causing bodily harm while intoxicated; homicide by intoxicated use of a vehicle; or injury by intoxicated use of a vehicle.

and Section 38

14 auto ref.

SECTION 40. 346.63 (6) (a) and (c) of the statutes are amended to read:

15 346.63 (6) (a) No person may cause injury ~~bodily harm~~ to another person by the  
 16 operation of a commercial motor vehicle while the person has an alcohol  
 17 concentration of 0.04 or more but less than 0.1.

18 (c) Under par. (a), the person charged has a defense if it appears by a  
 19 preponderance of the evidence that the injury ~~bodily harm~~ would have occurred even  
 20 if he or she had not been under the influence of an intoxicant, ~~a controlled substance,~~

1 ~~a controlled substance analog or a combination thereof, under the influence of any~~  
2 ~~other drug to a degree which renders him or her incapable of safely driving, or under~~  
3 ~~the combined influence of an intoxicant and any other drug to a degree which renders~~  
4 ~~him or her incapable of safely driving or did not have an alcohol concentration~~  
5 ~~described under par. (a).~~

NOTE: See the note to SECTION 24

37 ← auto.ref.

6 SECTION 41. 346.637 (1) and (2) of the statutes are amended to read:

7 346.637 (1) The laws relating to operating a motor vehicle and drinking  
8 alcohol, using ~~controlled substances or controlled substance analogs, or using any~~  
9 ~~combination of alcohol, controlled substances and controlled substance analogs an~~  
10 intoxicant.

11 (2) The effects of alcohol, ~~controlled substances or controlled substance~~  
12 ~~analog, an intoxicant or the use of them in any combination an intoxicant, on a~~  
13 ~~person's ability to operate a motor vehicle.~~

14 SECTION 42. 346.65 (2) (e) of the statutes is amended to read:

15 346.65 (2) (e) Except as provided in pars. (f) and (g), shall be fined not less than  
16 \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than  
17 5 7 years and 6 months if the number of convictions under ss. 940.09 (1) and 940.25  
18 in the person's lifetime, plus the total number of suspensions, revocations, and other  
19 convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions,  
20 revocations, or convictions arising out of the same incident or occurrence shall be  
21 counted as one.

NOTE: This SECTION increases the maximum term of imprisonment for a person with 5 or more suspensions, revocations and convictions related to intoxicated operation from 5 years to 7 years and 6 months. The increase is similar to adjustments made in 1997 Wisconsin Act 283.

1 SECTION 43. 346.65 (2) (f) of the statutes is renumbered 346.65 (2) (f) 1. and  
2 amended to read:

3 346.65 (2) (f) 1. If there was a minor passenger under 16 years of age in the  
4 motor vehicle at the time of the violation that gave rise to the conviction under s.  
5 346.63 (1), the applicable minimum and maximum forfeitures, fines, or  
6 imprisonment under par. (a), (b), (c), (d), or (e) for the conviction are doubled. The  
7 doubling of fines under this subdivision does not apply if the person convicted is  
8 subject to par. (g). *So...*

9 2. An offense under s. 346.63 (1) that subjects a person to a penalty under par.  
10 (c), (d), or (e) when there is a minor passenger under 16 years of age in the motor  
11 vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

NOTE: Current law provides that if a person is convicted of operating a motor vehicle while intoxicated, and if a minor passenger under 16 years of age is in or on a vehicle at the time of the violation, the applicable minimum and maximum forfeitures, fines or imprisonment for the convictions are doubled. Also, the applicable minimum and maximum fines will be doubled, tripled or quadrupled if the operator of the motor vehicle had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249, or 0.25 or above, respectively. This bill clarifies that the increased fines for increasing alcohol concentration may not be applied if the penalty relating to a minor passenger under the age of 16 years is applicable to the offense.

12 SECTION 44. 346.65 (2g) (b) and (c) and (2i) of the statutes are amended to read:

13 346.65 (2g) (b) The court may require a person ordered to perform community  
14 service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine  
15 resulted from violating s. 346.63 (2), 940.09 (1), or 940.25, to participate in  
16 community service work that demonstrates the adverse effects of substance abuse  
17 or of operating a vehicle while under the influence of an intoxicant ~~or other drug~~,  
18 including working at an alcoholism treatment facility approved under s. 51.45, an  
19 emergency room of a general hospital, or a driver awareness program under s.  
20 346.637. The court may order the person to pay a reasonable fee, based on the

Insert  
28.11

1 person's ability to pay, to offset the cost of establishing, maintaining, and monitoring  
2 the community service work ordered under this paragraph. If the opportunities  
3 available to perform community service work are fewer in number than the number  
4 of defendants eligible under this subsection, the court shall, when making an order  
5 under this paragraph, give preference to defendants who were under 21 years of age  
6 at the time of the offense. All provisions of par. (am) apply to any community service  
7 work ordered under this paragraph.

8 (c) If there was a minor passenger under 16 years of age in the motor vehicle  
9 or commercial motor vehicle at the time of the violation that gave rise to the  
10 conviction, the court may require a person ordered to perform community service  
11 work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine resulted from  
12 violating s. 346.63 (2), (5) (a), or (6) (a), 940.09 (1), or 940.25, to participate in  
13 community service work that benefits children or that demonstrates the adverse  
14 effects on children of substance abuse or of operating a vehicle while under the  
15 influence of an intoxicant ~~or other drug~~. The court may order the person to pay a  
16 reasonable fee, based on the person's ability to pay, to offset the cost of establishing,  
17 maintaining, and monitoring the community service work ordered under this  
18 paragraph.

19 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05 (3)  
20 (a), the court may order a defendant subject to sub. (2), or a defendant subject to s.  
21 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that  
22 demonstrates the adverse effects of substance abuse or of operating a vehicle while  
23 under the influence of an intoxicant ~~or other drug~~, including an alcoholism treatment  
24 facility approved under s. 51.45 or an emergency room of a general hospital in lieu  
25 of part or all of any forfeiture imposed or in addition to any penalty imposed. The

1 court may order the defendant to pay a reasonable fee, based on the person's ability  
2 to pay, to offset the costs of establishing, maintaining, and monitoring the visits  
3 ordered under this subsection. The court may order a visit to the site only if agreed  
4 to by the person responsible for the site. If the opportunities available to visit sites  
5 under this subsection are fewer than the number of defendants eligible for a visit,  
6 the court shall, when making an order under this subsection, give preference to  
7 defendants who were under 21 years of age at the time of the offense. The court shall  
8 ensure that the visit is monitored. A visit to a site may be ordered for a specific time  
9 and a specific day to allow the defendant to observe victims of vehicle accidents  
10 involving intoxicated drivers. If it appears to the court that the defendant has not  
11 complied with the court order to visit a site or to pay a reasonable fee, the court may  
12 order the defendant to show cause why he or she should not be held in contempt of  
13 court. Any organization or agency acting in good faith to which a defendant is  
14 assigned pursuant to an order under this subsection has immunity from any civil  
15 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.  
16 The issuance or possibility of the issuance of an order under this subsection does not  
17 entitle an indigent defendant who is subject to sub. (2) (a) to representation by  
18 counsel under ch. 977.

19 **SECTION 45.** 346.65 (2q) and (2u) (a) of the statutes are amended to read:

20 **346.65 (2q)** Any person violating s. 346.63 (2m) shall forfeit ~~\$10~~. ~~If there was~~  
21 ~~a minor passenger under 16 years of age in the motor vehicle at the time of the~~  
22 ~~violation that gave rise to the conviction under 346.63 (2m), the forfeiture is \$20~~ \$50.

23 **(2u) (a)** Any person violating s. 346.63 (7) shall forfeit ~~\$10~~ \$50.

NOTE: Current law provides that a person under the legal drinking age must forfeit \$10 if the person drives or operates a motor vehicle while the person has an alcohol concentration of more than 0.0 but not more than 0.1. If a minor passenger under 16 years

of age is in the motor vehicle, the forfeiture is \$20. This SECTION amends s. 346.65 (2q), stats., to provide that a violation of the absolute sobriety provision will result in a forfeiture of \$50.

Section 346.63 (7), stats., imposes an absolute sobriety requirement on a person driving or operating, or on duty time with respect to, a commercial motor vehicle. The current penalty for a violation of this provision is a forfeiture of \$10. This SECTION amends s. 346.65 (2u) (a), stats., to provide that a violation of the absolute sobriety provision will result in a forfeiture of \$50.

1       **SECTION 46.** 346.65 (3m) and (7) of the statutes are amended to read:

2       **346.65 (3m)** Any person violating s. 346.63 (2) or (6) shall be fined not less than  
3       \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more  
4       than one year in the county jail. If there was a minor passenger under 16 years of  
5       age in the motor vehicle at the time of the violation that gave rise to the conviction  
6       under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and  
7       maximum fines or periods of imprisonment for the conviction are doubled, and the  
8       place of imprisonment shall be determined under s. 973.02.

9       **(7)** A person ~~convicted~~ sentenced to imprisonment under sub. (2) (b), (c), (d),  
10       or (e) ~~or~~, (2j) (b) or (c), or (3m) shall be required to remain in the county jail for not  
11       less than a 48-consecutive-hour period.

NOTE: Section 346.65 (3m), stats., provides that a person who causes injury while operating a motor vehicle under the influence of an intoxicant or drug must be fined not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. This SECTION amends s. 346.65 (3m) and (7), stats., to provide that, with respect to imprisonment, a violator may be imprisoned for not more than one year in the county jail. However, the violator will be required to remain in the county jail for not less than a 48-consecutive hour period if sentenced to imprisonment under the specified provisions of s. 346.65, stats.

12       **SECTION 47.** 346.65 (8) of the statutes is created to read:

13       **346.65 (8)** When sentencing a person convicted for a violation of s. 346.63 (1),  
14       (2), or (6), a court may order the payment of restitution, using the applicable  
15       procedures under s. 800.093 or 973.20, for property damage caused by the person in  
16       the incident that resulted in the conviction.

NOTE: This SECTION authorizes a court to use statutory restitution procedures to impose a restitution requirement upon a person who causes property damage due to the

intoxicated operation of a motor vehicle. Section 973.20, stats., currently may be used for this purpose with respect to ss. 940.09 and 940.25 regarding homicide or injury by intoxicated use of a vehicle.

1       **SECTION 48.** 346.66 of the statutes is amended to read:

2       **346.66 Applicability of sections relating to accidents and accident**  
3 **reporting.** In addition to being applicable upon highways, ss. 346.67 to 346.70 are  
4 applicable upon frozen waters, all premises held out to the public for use of their  
5 motor vehicles, all premises provided by employers to employees for the use of their  
6 motor vehicles, and all premises provided to tenants of rental housing in buildings  
7 of 4 or more units for the use of their motor vehicles, whether such premises are  
8 publicly or privately owned and whether or not a fee is charged for the use thereof.  
9 These sections do not apply to private parking areas at farms or single-family  
10 residences or to accidents involving only snowmobiles, all-terrain vehicles, or  
11 vehicles propelled by human power or drawn by animals.

NOTE: Section 346.66 provides that statutes relating to accidents and accident reporting are applicable upon highways, all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in building of 4 or more units for the use of their motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for their use. An exception exists for private parking areas at farms or single-family residences or to accidents involving only snowmobiles, all-terrain vehicles or vehicles propelled by human power or drawn by animals. This SECTION amends s. 346.66, stats., to apply the statutes relating to accidents and accident reporting to frozen waters.

12       **SECTION 49.** 800.08 (5) of the statutes is created to read:

13       **800.08 (5)** In municipal court, the results of a blood alcohol analysis, as shown  
14 by a certified copy of the analysis, are admissible, unless the defendant makes a  
15 written request to the municipal court for the personal appearance of the blood  
16 analyst and the person who drew the blood. The request shall be made not later than  
17 10 days prior to the trial unless a later date is allowed by the court.

NOTE: This SECTION generally provides that a certified copy of a blood alcohol analysis is admissible as evidence in a municipal court trial. A defendant may compel the personal appearance of the blood analyst and the person who drew the defendant's

blood if the defendant makes a written request to the court no later than 10 days before trial. The court may approve a later request for the personal appearances.

1       **SECTION 50.** 885.235 (1) (b) of the statutes is repealed and recreated to read:

2       885.235 (1) (b) “Under the influence of an intoxicant” has the meaning given  
3 in s. 939.22 (42).

4       **SECTION 51.** 885.235 (1) (bd) and (c) of the statutes are repealed.

5       **SECTION 52.** 885.235 (1g) (a) of the statutes is amended to read:

6       885.235 (1g) (a) 1. The fact that the analysis shows that the person had an  
7 alcohol concentration of more than 0.0 but less than 0.08 is relevant evidence on the  
8 issue of being under the ~~combined influence of alcohol and a controlled substance,~~  
9 ~~a controlled substance analog or any other drug~~ an intoxicant, but, except as  
10 provided in par. (d) or sub. (1m), is not to be given any prima facie effect.

11       2. The fact that the analysis shows that the person had an alcohol concentration  
12 of more than 0.0 but less than 0.1 is relevant evidence on the issue of being under the  
13 ~~combined influence of alcohol and a controlled substance, a controlled substance~~  
14 ~~analog or any other drug~~ an intoxicant but, except as provided in par. (d) or sub. (1m),  
15 is not to be given any prima facie effect.

16       **SECTION 53.** 939.22 (19m) of the statutes is created to read:

17       939.22 (19m) “Intoxicant” means any of the following:

18       (a) Alcohol, a controlled substance, a controlled substance analog, any other  
19 drug, or a vapor-releasing substance.

20       (b) Any combination of alcohol, a controlled substance, a controlled substance  
21 analog, any other drug, or vapor-releasing substance.

NOTE: This SECTION creates a definition of the term “intoxicant” for the criminal  
code. The definition is the same as that used in s. 340.01 (52d) as created in SECTION 43  
of the bill.

22       **SECTION 54.** 939.22 (42) of the statutes is repealed and recreated to read:



1           939.22 (42) “Under the influence of an intoxicant” means any of the following:

2           (a) A condition in which a person’s ability to operate a vehicle, because of the  
3 consumption of an intoxicant, is impaired to the extent that the person is less able  
4 to exercise the clear judgment and steady hand necessary to handle and control a  
5 vehicle.

6           (b) A condition in which a person’s ability to handle a firearm or airgun is  
7 materially impaired because of the consumption of an intoxicant.

NOTE: Section 939.22 (42), stats., defines the term “under the influence of an  
intoxicant” for the criminal code. The statutory provision is amended to conform to the  
definition of the same term in s. 340.01 (73e) as created in SECTION 1 of the bill.

*3 Auto. ref.*

8           **SECTION 55.** 949.08 (2) (e) and (em) of the statutes are amended to read:

9           949.08 (2) (e) Is an adult passenger in the offender’s vehicle and the crime  
10 involved is specified in s. 346.63 (2) or 940.25 and the passenger knew the offender  
11 was under the influence of an intoxicant, ~~a controlled substance, a controlled~~  
12 ~~substance analog or any combination of an intoxicant, controlled substance and~~  
13 ~~controlled substance analog~~, or had a prohibited alcohol concentration, as defined in  
14 s. 340.01 (46m). This paragraph does not apply if the victim is also a victim of a crime  
15 specified in s. 940.30, 940.305, 940.31 or 948.30.

16           (em) Is an adult passenger in the offender’s commercial motor vehicle and the  
17 crime involved is specified in s. 346.63 (6) or 940.25 and the passenger knew the  
18 offender was under the influence of an intoxicant, ~~a controlled substance, a~~  
19 ~~controlled substance analog or any combination of an intoxicant, controlled~~  
20 ~~substance and controlled substance analog~~, or had an alcohol concentration of 0.04  
21 or more but less than 0.1. This paragraph does not apply if the victim is also a victim  
22 of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

23           **SECTION 56.** 967.055 (title) and (1) of the statutes are amended to read:

1           **967.055 (title) Prosecution of offenses; operation of a motor vehicle or**  
2 **motorboat; alcohol, or intoxicant or drug.** (1) INTENT (a) The legislature  
3 intends to encourage the vigorous prosecution of offenses concerning the operation  
4 of motor vehicles by persons under the influence of an intoxicant, ~~a controlled~~  
5 ~~substance, a controlled substance analog or any combination of an intoxicant,~~  
6 ~~controlled substance and controlled substance analog, under the influence of any~~  
7 ~~other drug to a degree which renders him or her incapable of safely driving, or under~~  
8 ~~the combined influence of an intoxicant and any other drug to a degree which renders~~  
9 ~~him or her incapable of safely driving~~ or having a prohibited alcohol concentration,  
10 as defined in s. 340.01 (46m), or offenses concerning the operation of commercial  
11 motor vehicles by persons with an alcohol concentration of 0.04 or more.

12           (b) The legislature intends to encourage the vigorous prosecution of offenses  
13 concerning the operation of motorboats by persons under the influence of an  
14 intoxicant, ~~a controlled substance, a controlled substance analog or any combination~~  
15 ~~of an intoxicant, controlled substance and controlled substance analog to a degree~~  
16 ~~which renders him or her incapable of operating a motorboat safely, or under the~~  
17 ~~combined influence of an intoxicant and any other drug to a degree which renders~~  
18 ~~him or her incapable of operating a motorboat safely~~ or having an alcohol  
19 concentration of 0.1 or more.

20           **SECTION 57.** 967.055 (1m) of the statutes is repealed.

21           **SECTION 58.** 967.055 (2) of the statutes is amended to read:

22           **967.055 (2) DISMISSING OR AMENDING CHARGE.** (a) Notwithstanding s. 971.29,  
23 if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or (5) or a  
24 local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09  
25 where the offense involved the use of a vehicle or an improper refusal under s.

1 343.305, the prosecutor shall apply to the court. The application shall state the  
2 reasons for the proposed amendment or dismissal. The court may approve the  
3 application only if the court finds that the proposed amendment or dismissal is  
4 consistent with the public's interest in deterring the operation of motor vehicles by  
5 persons who are under the influence of an intoxicant, ~~a controlled substance, a~~  
6 ~~controlled substance analog or any combination of an intoxicant, controlled~~  
7 ~~substance and controlled substance analog, under the influence of any other drug to~~  
8 ~~a degree which renders him or her incapable of safely driving, or under the combined~~  
9 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
10 ~~incapable of safely driving, or in deterring the operation of commercial motor~~  
11 vehicles by persons with an alcohol concentration of 0.04 or more. The court may not  
12 approve an application to amend the vehicle classification from a commercial motor  
13 vehicle to a noncommercial motor vehicle unless there is evidence in the record that  
14 the motor vehicle being operated by the defendant at the time of his or her arrest was  
15 not a commercial motor vehicle.

16 (b) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a  
17 charge under s. 30.681 (1) or a local ordinance in conformity therewith, a charge  
18 under s. 30.681 (2), a charge under s. 30.684 (5) or a local ordinance in conformity  
19 therewith, or a charge under s. 940.09 or 940.25 if the offense involved the use of a  
20 motorboat, except a sailboat operating under sail alone, the prosecutor shall apply  
21 to the court. The application shall state the reasons for the proposed amendment or  
22 dismissal. The court may approve the application only if the court finds that the  
23 proposed amendment or dismissal is consistent with the public's interest in deterring  
24 the operation of motorboats by persons who are under the influence of an intoxicant,  
25 ~~a controlled substance, a controlled substance analog or any combination of an~~

1 ~~intoxicant, controlled substance and controlled substance analog, under the~~  
2 ~~influence of any other drug to a degree which renders him or her incapable of~~  
3 ~~operating a motorboat safely, or under the combined influence of an intoxicant and~~  
4 ~~any other drug to a degree which renders him or her incapable of operating a~~  
5 ~~motorboat safely.~~

6 **SECTION 59. Initial applicability.**

7 (1) This act first applies to offenses committed on the effective date of this  
8 subsection, but does not preclude the counting of other convictions, suspensions, or  
9 revocations for purposes of administrative action by the department of  
10 transportation or sentencing by a court.

11 **SECTION 60. Effective date.**

12 (1) This act takes effect on January 1, ~~2004~~ <sup>2003</sup>

13 (END)

eligibility period has begun to run for a refusal, the latter period will operate as an offset to the period of ineligibility under s. 343.30, stats.

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

2 343.30 (1r) A court shall suspend a person's operating privilege upon  
3 conviction of tampering with an ignition interlock device in violation of s. 343.10 (5)  
4 or 347.413 for a period of not less than 6 months nor more than 9 months. Except  
5 for a violation under s. 343.10 (5), the person is eligible for an occupational license  
6 under s. 343.10 at any time. For a violation under s. 343.10 (5), the person is eligible  
for an occupational license pursuant to s. 343.10.

Insert  
6.8

NOTE: This SECTION creates a license suspension provision applicable to persons who are convicted of tampering with an ignition interlock device (IID), either under the general tampering provision in s. 347.413, stats., or the tampering language in s. 343.10, stats. As with the current IID tampering laws, this suspension applies to whoever commits the tampering violation (that is, the operator subject to the IID restriction or anyone else tampering with the device). Except where an occupational license is involved, the suspension period and the provision making the operator eligible for an occupational license at any time is the same as that currently applicable to a first offense violator of the statutes prohibiting the operation of a motor vehicle while under the influence of an intoxicant or other drug (OWI). If the violator is an OWI violator who has an occupational license, the provisions of the occupational license statute determine future eligibility for such a license.

8 SECTION 7. 343.303 of the statutes is renumbered 343.303 (1) (intro.) and  
9 amended to read:

10 343.303 (1) (intro.) If a law enforcement officer has probable cause to believe,  
11 prior to an arrest, may request a person to provide a sample of his or her breath for  
12 a preliminary breath screening test using a device approved by the department for  
13 this purpose if any of the following conditions exists:

14 (a) The law enforcement officer has reasonable suspicion that the person is  
15 violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity  
16 therewith, or s. 346.63 (2) or (6) or, 940.09 (1) or 940.25 or s. 940.09 where the offense  
17 involved the use of a vehicle, or if the,

1 ~~him or her incapable of safely driving or did not have an alcohol concentration~~  
2 ~~described under par. (a).~~

NOTE: See the note to SECTION 24.

3 SECTION 28. 346.637 (1) and (2) of the statutes are amended to read:

4 346.637 (1) The laws relating to operating a motor vehicle and ~~drinking~~  
5 ~~alcohol, using controlled substances or controlled substance analogs, or using any~~  
6 ~~combination of alcohol, controlled substances and controlled substance analogs an~~  
7 intoxicant.

8 (2) The effects of ~~alcohol, controlled substances or controlled substance~~  
9 ~~analog, an intoxicant~~ or the use of them in ~~any combination an intoxicant~~, on a  
10 person's ability to operate a motor vehicle.

11 SECTION 29. 346.65 (2) (e) of the statutes is amended to read:

12 346.65 (2) (e) Except as provided in pars. (f) and (g), shall be fined not less than  
13 \$600 nor more than \$2,000 and imprisoned for ~~not less than 6 months nor more than~~  
14 ~~5 7 years and six months~~ if the number of convictions under ss. 940.09 (1) and 940.25  
15 in the person's lifetime, plus the total number of suspensions, revocations and other  
16 convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions,  
17 revocations or convictions arising out of the same incident or occurrence shall be  
18 counted as one.

NOTE: This SECTION increases the maximum term of imprisonment for a person  
with 5 or more suspensions, revocations and convictions related to intoxicated operation  
from 5 years to 7 years and 6 months. The increase is similar to adjustments made in 1997  
Wisconsin Act 283.

19 SECTION 30. 346.65 (2) (g) 4. of the statutes is created to read:

20 346.65 (2) (g) 4. The increased fines provided in this paragraph do not apply  
21 if a person convicted is subject to par. (f).

NOTE: Current law provides that if a person is convicted of operating a motor  
vehicle while intoxicated, and if a minor passenger under 16 years of age is in or on a

Insert  
28.11

vehicle at the time of the violation, the applicable minimum and maximum forfeitures, fines or imprisonment for the convictions are doubled. Also, the applicable minimum and maximum fines will be doubled, tripled or quadrupled if the operator of the motor vehicle had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249, or 0.25 or above, respectively. This draft clarifies that the increased fines for increasing alcohol concentration may not be applied if the penalty relating to a minor passenger under the age of 16 years is applicable to the offense.

1           **SECTION 31.** 346.65 (2g) (b) and (c) and (2i) of the statutes are amended to read:

2           346.65 (2g) (b) The court may require a person ordered to perform community  
3 service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine  
4 resulted from violating s. 346.63 (2), 940.09 (1) or 940.25, to participate in community  
5 service work that demonstrates the adverse effects of substance abuse or of operating  
6 a vehicle while under the influence of an intoxicant or other drug, including working  
7 at an alcoholism treatment facility approved under s. 51.45, an emergency room of  
8 a general hospital or a driver awareness program under s. 346.637. The court may  
9 order the person to pay a reasonable fee, based on the person's ability to pay, to offset  
10 the cost of establishing, maintaining and monitoring the community service work  
11 ordered under this paragraph. If the opportunities available to perform community  
12 service work are fewer in number than the number of defendants eligible under this  
13 subsection, the court shall, when making an order under this paragraph, give  
14 preference to defendants who were under 21 years of age at the time of the offense.  
15 All provisions of par. (am) apply to any community service work ordered under this  
16 paragraph.

17           (c) If there was a minor passenger under 16 years of age in the motor vehicle  
18 or commercial motor vehicle at the time of the violation that gave rise to the  
19 conviction, the court may require a person ordered to perform community service  
20 work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine resulted from  
21 violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, to participate in

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3047/P3dn

PJH:.....  
*King*

Ron:

I have redrafted 3047/P2 as you requested. I remain concerned, however, about the proposed changes to s. 346.65 (2) (g). As we discussed, the creation of s. 346.65 (2) (g) 4., as proposed by the committee, could actually work to reward someone for having a minor in his or her vehicle while he or she ~~was~~ under the influence of an intoxicant or operating with a prohibited alcohol level concentration.

Section 346.65 (2) (f) doubles fines for having a minor passenger in the vehicle at the time of the OWI violation. Section 346.65 (2) (g) doubles, triples, or quadruples fines for having an increasingly high alcohol concentration.

As written in this draft, s. 346.65 (2) (g) 4. states that a person's fine will NOT be doubled, tripled, or quadrupled, regardless of the level of intoxication, if the person is already subject to a double fine for having a minor in his or her vehicle. Therefore, if someone would otherwise be subject to a triple fine for a very high alcohol concentration, he or she would be better off having a minor in the vehicle, and being subject therefore to only a double fine.

You have indicated that the committee considered this and wants to draft this section in that way. I have changed the draft accordingly; please contact Tim if you want further changes, as I will be on maternity leave until mid-January.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3047/P3dn  
FJII:kmg.pg

October 17, 2001

Ron:

I have redrafted 3047/P2 as you requested. I remain concerned, however, about the proposed changes to s. 346.65 (2) (g). As we discussed, the creation of s. 346.65 (2) (g) 4., as proposed by the committee, could actually work to reward someone for having a minor in his or her vehicle while he or she is under the influence of an intoxicant or operating with a prohibited alcohol level concentration.

Section 346.65 (2) (f) doubles fines for having a minor passenger in the vehicle at the time of the OWI violation. Section 346.65 (2) (g) doubles, triples, or quadruples fines for having an increasingly high alcohol concentration.

As written in this draft, s. 346.65 (2) (g) 4. states that a person's fine will NOT be doubled, tripled, or quadrupled, regardless of the level of intoxication, if the person is already subject to a double fine for having a minor in his or her vehicle. Therefore, if someone would otherwise be subject to a triple fine for a very high alcohol concentration, he or she would be better off having a minor in the vehicle, and being subject therefore to only a double fine.

You have indicated that the committee considered this and wants to draft this section in that way. I have changed the draft accordingly; please contact Tim if you want further changes, as I will be on maternity leave until mid-January.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)

## Fast, Timothy

---

**From:** Fast, Timothy  
**Sent:** Friday, November 02, 2001 10:05 AM  
**To:** Sklansky, Ron  
**Cc:** Gary, Aaron  
**Subject:** RE: Legislative Council draft on OWI (Peggy's LRB-3047)

Ron:

I'll make these changes and get it into editing today. I confess that it wasn't only a set of third eyes looking at it but my second or third run-through of the bill. I think, on balance, the bill is in good shape (although with OWI laws, who knows)!

Have a good weekend. Peace again, Tim

-----Original Message-----

**From:** Sklansky, Ron  
**Sent:** Friday, November 02, 2001 9:03 AM  
**To:** Fast, Timothy  
**Subject:** RE: Legislative Council draft on OWI (Peggy's LRB-3047)

Tim:

I've been pretty jammed up all week, but I finally was able to look at this today. Definitely make all the changes you suggest. I can't believe I missed nos. 3 to 5! Well, I guess that's the benefit of having a second and third pair of eyes looking at the work product. Thanks.

Ron

-----Original Message

**From:** Fast, Timothy  
**Sent:** Sunday, October 28, 2001 2:53 PM  
**To:** Sklansky, Ron  
**Cc:** Gary, Aaron  
**Subject:** Legislative Council draft on OWI (Peggy's LRB-3047)

Ron,

Greetings. I hope you had a good weekend. Please grab a cup of coffee and/or a muffin before tackling this. Hey, I'll deliver!

I took a last run through today on the /P3 before converting it to a /1. I made very, very minor stylistic changes in a couple of the NOTES. Re substantive matters, here are some questions/recommended changes:

1. Do you want to amend s. 85.53(1)(c) re definition of "intoxicant" to read "has the meaning given in s. 340.01 (25d)"?
2. Do you want to add "or use" after "consumption" in proposed s. 340.01 (73e) (SECTION 3) and repealed and recreated s. 939.22 (42) (SECTION 53) re the definition of "under the influence of an intoxicant"? See, for example, the amendment of ss. 343.10 (8) (intro.) (SECTION 4), 343.16 (5) (a) (SECTION 5), and 343.30 (1q) (c) 1. (intro.) (SECTION 9), which will read "use of an intoxicant".
3. Do you want to amend s. 343.307 (2) (e) to read "while intoxicated or under the influence of an intoxicant"? See the amendment of s. 343.307 (1) (d) (SECTION 24).
4. Do you want to amend s. 351.02 (1) (a) 10. to read "while under the influence of an intoxicant"?

5. Do you want to amend s. 895.53 (2) to read "presence or quantity of an intoxicant, as defined in s. 340.01 (25d),"?

6. I have removed the amendment of s. 967.055 (1) (b) and (2) (b). These provisions relate to motorboats and will be amended in the sport recreational vehicle draft.

7. I have revised the initial applicability provision (SECTION 58) so that it's patterned after SECTION 9352 (7kk) in the budget act.

Keep the faith.

Peace, Tim

1 ~~to a degree which renders him or her incapable of safely driving, or under the~~  
2 ~~combined influence of an intoxicant and any other drug to a degree which renders~~  
3 ~~him or her incapable of safely driving; or, A violation of this paragraph is not an~~  
4 ~~included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).~~

5 (b) The person has a prohibited alcohol concentration. A violation of this  
6 paragraph is not an included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).

7 **SECTION 38.** 346.63 (2) (a) (intro.) and 1. and (b) of the statutes are amended  
8 to read:

9 346.63 (2) (a) (intro.) It is unlawful for any person to cause injury bodily harm  
10 to another person by the operation of a vehicle while:

11 1. Under the influence of an intoxicant, ~~a controlled substance, a controlled~~  
12 ~~substance analog or any combination of an intoxicant, a controlled substance and a~~  
13 ~~controlled substance analog, under the influence of any other drug to a degree which~~  
14 ~~renders him or her incapable of safely driving, or under the combined influence of an~~  
15 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
16 ~~safely driving; or~~

17 (b) In an action under this subsection, the defendant has a defense if he or she  
18 proves by a preponderance of the evidence that the injury bodily harm would have  
19 occurred even if he or she had been exercising due care and he or she had not been  
20 under the influence of an intoxicant, ~~a controlled substance, a controlled substance~~  
21 ~~analog or a combination thereof, under the influence of any other drug to a degree~~  
22 ~~which renders him or her incapable of safely driving, or under the combined~~  
23 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
24 ~~incapable of safely driving or did not have a prohibited alcohol concentration~~  
25 described under par. (a) 2.

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from  
p. 27

39 ←

NOTE: Section 346.63 (2) and (6), stats., provides that a person may not cause injury while operating a motor vehicle under the influence of an intoxicant or other drug. This SECTION and SECTIONS ~~25 to 27~~ also prohibit the causing of bodily harm. The term "bodily harm" is defined in SECTION 1 to mean physical pain or injury, illness or any impairment of physical condition. The definition is adopted from s. 939.22 (4), stats.

**NOTE:** This SECTION and SECTION 38 clarifies that the crime of driving or operating a motor vehicle while under the influence of an intoxicant or with a prohibited alcohol concentration is not an included offense of the following crimes: causing bodily harm while intoxicated; homicide by intoxicated use of a vehicle; or injury by intoxicated use of a vehicle.

move  
p. 26

1 SECTION 39. 346.63 (6) (a) and (c) of the statutes are amended to read:

2 346.63 (6) (a) No person may cause ~~injury~~ bodily harm to another person by the  
3 operation of a commercial motor vehicle while the person has an alcohol  
4 concentration of 0.04 or more but less than 0.1.

5 (c) Under par. (a), the person charged has a defense if it appears by a  
6 preponderance of the evidence that the ~~injury~~ bodily harm would have occurred even  
7 if he or she had not been under the influence of an intoxicant, ~~a controlled substance,~~  
8 ~~a controlled substance analog or a combination thereof,~~ under the influence of any  
9 other drug to a degree which renders him or her incapable of safely driving, or under  
10 the combined influence of an intoxicant and any other drug to a degree which renders  
11 him or her incapable of safely driving or did not have an alcohol concentration  
12 described under par. (a).

38

NOTE: See the note to SECTION 37.

X

13 SECTION 40. 346.637 (1) and (2) of the statutes are amended to read:

14 346.637 (1) The laws relating to operating a motor vehicle and ~~drinking~~  
15 alcohol, using controlled substances or controlled substance analogs, or using any  
16 combination of alcohol, controlled substances and controlled substance analogs an  
17 intoxicant.