



State of Wisconsin
2001 - 2002 LEGISLATURE

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PJH&TNF:kmg:pg
2 (Kedroff
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WANTED TUES
11/6

~~Out of charge~~
~~P. J.~~

2001 BILL

Gen. Cat.

1 AN ACT *to repeal* 346.62 (1) (a) and (b), 885.235 (1) (bd) and 967.055 (1m); *to*
2 *renumber and amend* 343.303; *to amend* 85.53 (1) (c), 343.10 (8) (intro.),
3 343.16 (5) (a), 343.30 (1g) (a), 343.30 (1g) (b), 343.30 (1q) (c) 1. (intro.), 343.30
4 (1q) (d), 343.30 (1q) (h), 343.305 (2), (3) (am) and (b), (4) (form) and (5) (b),
5 343.305 (6) (a), 343.305 (9) (a) (intro.) and 4., 343.305 (9) (a) 5. a. and c., 343.305
6 (9) (am) (intro.) and 4., 343.305 (9) (am) 5. a. and c., 343.305 (9) (c), 343.305 (10)
7 (c) 1. (intro.), 343.305 (10) (d), 343.307 (1) (d) and (2) (e), 343.31 (1) (am) and (ar),
8 343.31 (1) (b), 343.31 (2) and (3) (b), 343.315 (2) (a) 1. and 6., 343.44 (1) (a) and
9 (b), 344.576 (2) (b) and (c), 345.24 (1), 346.17 (3) (b), 346.17 (3) (c), 346.61, 346.63
10 (title), 346.63 (1) (a) and (b), 346.63 (2) (a) (intro.) and 1. and (b), 346.63 (6) (a)
11 and (c), 346.637 (1) and (2), 346.65 (2) (e), 346.65 (2g) (b) and (c) and (2i), 346.65
12 (2q) and (2u) (a), 346.65 (3m) and (7), 346.66, 351.02 (1) (a) 10., 885.235 (1g) (a),
13 895.53 (2), 949.08 (2) (e) and (em), 967.055 (title) and (1) (a) and 967.055 (2) (a);
14 *to repeal and recreate* 343.305 (5) (d), 885.235 (1) (b) and (c) and 939.22 (42);

BILL

1 and *to create* 340.01 (5u) and (19d), 340.01 (25d) and (73e), 343.30 (1g) (c),
2 343.305 (5) (e), 346.65 (2) (g) 4., 346.65 (8), 800.08 (5) and 939.22 (19m) of the
3 statutes; **relating to:** intoxicated operation of a motor vehicle and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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

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

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 3 of the bill. Other changes to the statutes made in the bill are identified in notes to the provisions affected.

5 **SECTION 1.** 85.53 (1) (c) of the statutes is amended to read:

6 85.53 (1) (c) "Intoxicant" ~~means any alcohol beverage, controlled substance,~~
7 ~~controlled substance analog or other drug or any combination thereof~~ has the
8 meaning given in s. 340.01 (25d).

9 **SECTION 2.** 340.01 (5u) and (19d) of the statutes are created to read:

10 340.01 (5u) "Bodily harm" means physical pain or injury, illness, or any
11 impairment of physical condition.

BILL

1 **(19d)** "Great bodily harm" means bodily injury which creates a substantial risk
2 of death, or which causes serious permanent disfigurement, or which causes a
3 permanent or protracted loss or impairment of the function of any bodily member or
4 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).

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

6 **340.01 (25d)** "Intoxicant" means any of the following:

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

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

11 **(73e)** "Under the influence of an intoxicant" means a condition in which a
12 person's ability to operate a motor vehicle, because of the consumption or use of an
13 intoxicant, is impaired to the extent that the person is less able to exercise the clear
14 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, 343.307, 343.44,
346.637, and 895.53, stats. Other sections of the statutes make use of these terms plus
the term "other drug": ss. 85.53, 343.303, 343.305, 343.31, 343.315, 343.63, 344.576,
351.02, 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. a., states in part:

BILL

“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. 2666.]

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, 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,

BILL

1 disease, or any other condition which might prevent such applicant or licensed
2 person from exercising reasonable and ordinary control over a motor vehicle. When
3 the department requires the applicant to submit to an examination, the applicant
4 shall pay the cost thereof. If the department receives an application for a renewal
5 or duplicate license after voluntary surrender under s. 343.265 or receives a report
6 from a physician or optometrist under s. 146.82 (3), or if the department has a report
7 of 2 or more arrests within a one-year period for any combination of violations of s.
8 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally
9 recognized American Indian tribe or band in this state in conformity with s. 346.63
10 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09
11 where the offense involved the use of a vehicle, the department shall determine, by
12 interview or otherwise, whether the operator should submit to an examination under
13 this section. The examination may consist of an assessment. If the examination
14 indicates that education or treatment for a disability, disease, or condition
15 concerning the use of alcohol, ~~a controlled substance or a controlled substance analog~~
16 an intoxicant is appropriate, the department may order a driver safety plan in
17 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the
18 driver safety plan, the department shall revoke the person's operating privilege in
19 the manner specified in s. 343.30 (1q) (d).

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

21 343.30 (1g) (a) Except as provided in ~~par.~~ pars. (b) and (c), a court may suspend
22 a person's operating privilege for any period not exceeding 6 months upon the
23 person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in
24 conformity therewith.

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

BILL

1 343.30 (1g) (b) ~~A~~ Except as provided in par. (c), a court shall revoke a person's
2 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or
3 (d) or a local ordinance in conformity therewith if the person has been convicted of
4 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under
5 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the
6 5-year period preceding the violation. The revocation shall be for a period of 6
7 months, unless the court orders a period of revocation of less than 6 months and
8 places its reasons for ordering the lesser period of revocation on the record.

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

10 343.30 (1g) (c) A court shall suspend a person's operating privilege upon the
11 person's conviction under s. 343.44 for violating s. 343.10 (5) (a) 3. or under s.
12 347.413. The revocation shall be for a period of not less than 6 months nor more than
13 9 months. If a person is convicted under s. 347.413, the person is eligible for an
14 occupational license at any time.

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.

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

16 343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall
17 order the person to submit to and comply with an assessment by an approved public
18 treatment facility, as defined in s. 51.45 (2) (c), for examination of the person's use
19 of alcohol, ~~controlled substances or controlled substance analogs~~ an intoxicant and

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1 development of a driver safety plan for the person. The court shall notify the
2 department of transportation of the assessment order. The court shall notify the
3 person that noncompliance with assessment or the driver safety plan will result in
4 revocation of the person's operating privilege until the person is in compliance. The
5 assessment order shall:

6 **SECTION 10.** 343.30 (1q) (d) of the statutes, as affected by 1997 Wisconsin Act
7 84, is amended to read:

8 343.30 (1q) (d) The assessment report shall order compliance with a driver
9 safety plan. The report shall inform the person of the fee provisions under s. 46.03
10 (18) (f). The driver safety plan may include a component that makes the person
11 aware of the effect of his or her offense on a victim and a victim's family. The driver
12 safety plan may include treatment for the person's misuse, abuse, or dependence on
13 ~~alcohol, controlled substances or controlled substance analogs~~ an intoxicant, or
14 attendance at a school under s. 345.60, or both. If the plan requires inpatient
15 treatment, the treatment shall not exceed 30 days. A driver safety plan under this
16 paragraph shall include a termination date consistent with the plan which shall not
17 extend beyond one year. The county department under s. 51.42 shall assure
18 notification of the department of transportation and the person of the person's
19 compliance or noncompliance with assessment and with treatment. The school
20 under s. 345.60 shall notify the department, the county department under s. 51.42,
21 and the person of the person's compliance or noncompliance with the requirements
22 of the school. Nonpayment of the assessment fee or, if the person has the ability to
23 pay, nonpayment of the driver safety plan fee is noncompliance with the court order.
24 If the department is notified of any noncompliance, other than for nonpayment of the
25 assessment fee or driver safety plan fee, it shall revoke the person's operating

BILL

1 privilege until the county department under s. 51.42 or the school under s. 345.60
2 notifies the department that the person is in compliance with assessment or the
3 driver safety plan. If the department is notified that a person has not paid the
4 assessment fee, or that a person with the ability to pay has not paid the driver safety
5 plan fee, the department shall suspend the person's operating privilege for a period
6 of 2 years or until it receives notice that the person has paid the fee, whichever occurs
7 first. The department shall notify the person of the suspension or revocation, the
8 reason for the suspension or revocation, and the person's right to a review. A person
9 may request a review of a revocation based upon failure to comply with a driver safety
10 plan within 10 days of notification. The review shall be handled by the subunit of
11 the department of transportation designated by the secretary. The issues at the
12 review are limited to whether the driver safety plan, if challenged, is appropriate and
13 whether the person is in compliance with the assessment order or the driver safety
14 plan. The review shall be conducted within 10 days after a request is received. If the
15 driver safety plan is determined to be inappropriate, the department shall order a
16 reassessment and, if the person is otherwise eligible, the department shall reinstate
17 the person's operating privilege. If the person is determined to be in compliance with
18 the assessment or driver safety plan, and if the person is otherwise eligible, the
19 department shall reinstate the person's operating privilege. If there is no decision
20 within the 10-day period, the department shall issue an order reinstating the
21 person's operating privilege until the review is completed, unless the delay is at the
22 request of the person seeking the review.

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

24 343.30 (1q) (h) The court or department shall provide that the period of
25 suspension or revocation imposed under this subsection shall be reduced by any

BILL

1 period of suspension or revocation previously served under s. 343.305 if the
2 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63
3 (1) or (2m) or a local ordinance in conformity therewith arise out of the same incident
4 or occurrence. The court or department shall order that the period of suspension or
5 revocation imposed under this subsection run concurrently with any period of time
6 remaining on a suspension or revocation imposed under s. 343.305 arising out of the
7 same incident or occurrence. The court or department shall order that any period
8 of time that must expire before a person is eligible for an occupational license under
9 this subsection be reduced by any similar period previously expired under s. 343.305
10 if the suspension or revocation under s. 343.305 and the conviction for violation of
11 s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same
12 incident or occurrence. The court or department shall order that any period of time
13 that must expire before a person is eligible for an occupational license under this
14 subsection run concurrently with any similar period of time remaining under s.
15 343.305 arising out of the same incident or occurrence. The court may modify an
16 occupational license authorized under s. 343.305 (8) (d) in accordance with this
17 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 for an occupational license under s. 343.30, stats.

BILL

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

3 343.303 (1) (intro.) ~~If a~~ A law enforcement officer has probable cause to believe,
4 prior to an arrest, may request a person to provide a sample of his or her breath for
5 a preliminary breath screening test using a device approved by the department for
6 this purpose if any of the following conditions exists:

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

11 (b) The law enforcement officer detects any presence of alcohol, a controlled
12 substance, controlled substance analog or other drug, or a combination thereof, an
13 intoxicant on a person driving or operating or on duty time with respect to a
14 commercial motor vehicle ~~or,~~

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

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

25 (3).

BILL

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

7 **(4)** The general penalty provision under s. 939.61 (1) does not apply to a refusal
8 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's breath, blood, or urine; 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.

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

11 **343.305 (2) IMPLIED CONSENT.** Any person who is on duty time with respect to
12 a commercial motor vehicle or drives or operates a motor vehicle upon the public
13 highways of this state, or in those areas enumerated in s. 346.61, is deemed to have
14 given consent to one or more tests of his or her breath, blood, or urine, for the purpose
15 of determining the presence or quantity of an intoxicant in his or her ~~blood or breath,~~
16 ~~of alcohol, controlled substances, controlled substance analogs or other drugs, or any~~
17 ~~combination of alcohol, controlled substances, controlled substance analogs and~~
18 ~~other drugs~~ breath, blood, or urine, when requested to do so by a law enforcement

BILL

1 officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (b). Any such
2 tests shall be administered upon the request of a law enforcement officer. The law
3 enforcement agency by which the officer is employed shall be prepared to administer,
4 either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a)
5 or (am), and may designate which of the tests shall be administered first.

6 (3) (am) Prior to arrest, a law enforcement officer may request the person to
7 provide one or more samples of his or her breath, blood, or urine for the purpose
8 specified under sub. (2) whenever a law enforcement officer detects any presence of
9 alcohol, ~~a controlled substance, a controlled substance analog or other drug, or a~~
10 ~~combination thereof, an intoxicant~~ on a person driving or operating or on duty time
11 with respect to a commercial motor vehicle or has reason to believe the person is
12 violating or has violated s. 346.63 (7). Compliance with a request for one type of
13 sample does not bar a subsequent request for a different type of sample. For the
14 purposes of this paragraph, “law enforcement officer” includes inspectors in the
15 performance of duties under s. 110.07 (3).

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

BILL

1 (4) (form)

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

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

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

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

21 (5) (b) Blood may be withdrawn from the person arrested for violation of s.
22 346.63 (1), (2), (2m), (5), or (6) or 940.25, or s. 940.09 where the offense involved the
23 use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), or (5), or
24 as provided in sub. (3) (am) or (b) to determine the presence or quantity of ~~alcohol,~~
25 ~~a controlled substance, a controlled substance analog or any other drug, or any~~

BILL

1 ~~combination of alcohol, controlled substance, controlled substance analog and any~~
2 ~~other drug~~ an intoxicant in the blood only by a physician, registered nurse, medical
3 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.

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

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

9 1. Driven or operated a motor vehicle while under the influence of an
10 intoxicant.

11 2. Had a prohibited alcohol concentration.

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

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

15 343.305 (5) (e) Test results under this section shall be given the effect required
16 under s. 885.235.

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

18 343.305 (6) (a) Chemical analyses of blood or urine to be considered valid under
19 this section shall have been performed substantially according to methods approved
20 by the laboratory of hygiene and by an individual possessing a valid permit to
21 perform the analyses issued by the department of health and family services. The
22 department of health and family services shall approve laboratories for the purpose

BILL

1 of performing chemical analyses of blood or urine for ~~alcohol, controlled substances~~
2 ~~or controlled substance analogs~~ an intoxicant and shall develop and administer a
3 program for regular monitoring of the laboratories. A list of approved laboratories
4 shall be provided to all law enforcement agencies in the state. Urine specimens are
5 to be collected by methods specified by the laboratory of hygiene. The laboratory of
6 hygiene shall furnish an ample supply of urine and blood specimen containers to
7 permit all law enforcement officers to comply with the requirements of this section.

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

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

22 4. That the person may request a hearing on the revocation within 10 days by
23 mailing or delivering a written request to the clerk of the appropriate circuit court
24 whose address is specified in the notice. If no request for a hearing is received within

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1 the 10-day period, the revocation period commences 30 days after the notice is
2 issued.

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

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

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


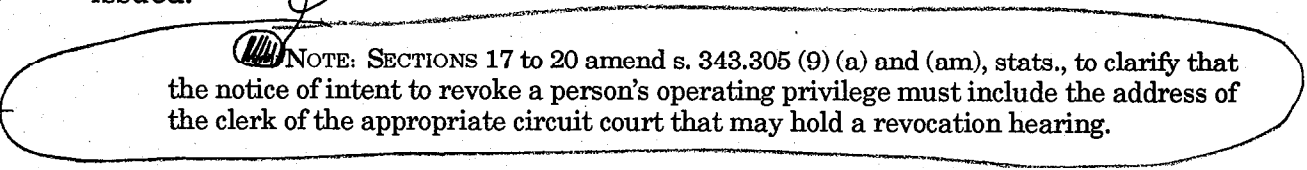
20 **SECTION 19.** 343.305 (9) (am) (intro.) and 4. of the statutes are amended to read:

21 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with
22 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law
23 enforcement officer shall immediately take possession of the person's license, issue
24 an out-of-service order to the person for the 24 hours after the refusal and notify the
25 department in the manner prescribed by the department, and prepare a notice of

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1 intent to revoke, by court order under sub. (10), the person's operating privilege. The
2 officer shall issue a copy of the notice of intent to revoke the privilege to the person
3 and submit or mail a copy with the person's license to the clerk of the circuit court
4 for the county in which the refusal is made. The officer shall also mail a copy of the
5 notice of intent to revoke to the district attorney for that county and the department.
6 The notice of intent to revoke the person's operating privilege shall contain
7 substantially all of the following information:

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



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.

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

14 343.305 (9) (am) 5. a. Whether the officer detected any presence of alcohol,
15 ~~controlled substance, controlled substance analog or other drug, or a combination~~
16 ~~thereof, an intoxicant~~ on the person or had reason to believe that the person was
17 violating or had violated s. 346.63 (7).

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

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

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1 343.305 (9) (c) If a law enforcement officer informs the circuit court that a
2 person has refused to submit to a test under sub. (3) (a) or (am), the court shall be
3 prepared to hold any requested hearing to determine if the refusal was proper. The
4 scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5.
5 Neither party is entitled to pretrial discovery. Section 967.055 applies to any hearing
6 under this subsection.

NOTE: This SECTION amends s. 343.305 (9) (c), stats., to clarify 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).

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

8 343.305 (10) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall
9 order the person to submit to and comply with an assessment by an approved public
10 treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of
11 alcohol, ~~controlled substances or controlled substance analogs~~ an intoxicant and
12 development of a driver safety plan for the person. The court shall notify the person
13 and the department of transportation of the assessment order. The court shall also
14 notify the person that noncompliance with assessment or the driver safety plan will
15 result in license suspension until the person is in compliance. The assessment order
16 shall:

17 **SECTION 23.** 343.305 (10) (d) of the statutes, as affected by 1997 Wisconsin Act
18 84, is amended to read:

19 343.305 (10) (d) The assessment report shall order compliance with a driver
20 safety plan. The report shall inform the person of the fee provisions under s. 46.03
21 (18) (f). The driver safety plan may include a component that makes the person
22 aware of the effect of his or her offense on a victim and a victim's family. The driver
23 safety plan may include treatment for the person's misuse, abuse, or dependence on

BILL

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 treatment. The school under s.
8 345.60 shall notify the department, the county department under s. 51.42, and the
9 person of the person's compliance or noncompliance with the requirements of the
10 school. Nonpayment of the assessment fee or, if the person has the ability to pay,
11 nonpayment of the driver safety plan fee is noncompliance with the court order. If
12 the department is notified of 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

BILL

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 24.** 343.307 (1) (d) and (2) (e) of the statutes are amended to read:

12 343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits
13 refusal of chemical testing or use of a motor vehicle while intoxicated or under the
14 influence of ~~a controlled substance or controlled substance analog, or a combination~~
15 ~~thereof~~ an intoxicant, or with an excess or specified range of alcohol concentration,
16 ~~or under the influence of any drug to a degree that renders the person incapable of~~
17 ~~safely driving,~~ as those or substantially similar terms are used in that jurisdiction's
18 laws.

19 (2) (c) Convictions under the law of another jurisdiction that prohibits refusal
20 of chemical testing or use of a motor vehicle while intoxicated or under the influence
21 of ~~a controlled substance or controlled substance analog, or a combination thereof~~
22 an intoxicant, or with an excess or specified range of alcohol concentration, ~~or under~~
23 ~~the influence of any drug to a degree that renders the person incapable of safely~~
24 ~~driving,~~ as those or substantially similar terms are used in that jurisdiction's laws.

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

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

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

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

14 343.31 (1) (b) Upon conviction for operation of a motor vehicle while under the
15 influence of an intoxicant, ~~controlled substance, controlled substance analog or a~~
16 ~~combination thereof, under the influence of any other drug to a degree which renders~~
17 ~~him or her incapable of safely driving, or under the combined influence of an~~
18 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~
19 ~~safely driving~~, in accordance with the order of the court.

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

22 343.31 (2) The department shall revoke the operating privilege of any resident
23 upon receiving notice of the conviction of such person in another jurisdiction for an
24 offense therein which, if committed in this state, would have been cause for
25 revocation under this section or for revocation under s. 343.30 (1q). Such offenses

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1 shall include violation of any law of another jurisdiction that prohibits use of a motor
2 vehicle while intoxicated or under the influence of ~~a controlled substance or~~
3 ~~controlled substance analog, or a combination thereof~~ an intoxicant, or with an
4 excess or specified range of alcohol concentration, ~~or under the influence of any drug~~
5 ~~to a degree that renders the person incapable of safely driving~~, as those or
6 substantially similar terms are used in that jurisdiction's laws. Upon receiving
7 similar notice with respect to a nonresident, the department shall revoke the
8 privilege of the nonresident to operate a motor vehicle in this state. Such revocation
9 shall not apply to the operation of a commercial motor vehicle by a nonresident who
10 holds a valid commercial driver license issued by another state.

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

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

19 343.315 (2) (a) 1. Section 346.63 (1) (a) or a local ordinance in conformity
20 therewith or a law of a federally recognized American Indian tribe or band in this
21 state in conformity with s. 346.63 (1) (a) or the law of another jurisdiction prohibiting
22 driving or operating a motor vehicle while intoxicated or under the influence of
23 alcohol, ~~a controlled substance, a controlled substance analog or a combination~~
24 ~~thereof, or under the influence of any drug which renders the person incapable of~~

BILL

1 ~~safely driving an intoxicant~~, as those or substantially similar terms are used in that
2 jurisdiction's laws.

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

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

14 343.44 (1) (a) *Operating while suspended.* No person whose operating privilege
15 has been duly suspended under the laws of this state may operate a motor vehicle
16 upon any highway in this state during the period of suspension or in violation of any
17 restriction on an occupational license issued to the person during the period of
18 suspension. A person's knowledge that his or her operating privilege is suspended
19 is not an element of the offense under this paragraph. In this paragraph, "restriction
20 on an occupational license" means restrictions imposed under s. 343.10 (5) (a) as to
21 hours of the day, area, routes or purpose of travel, vehicles allowed to be operated,
22 use of an ignition interlock device, sobriety, ~~or use of alcohol, controlled substances~~
23 ~~or controlled substance analogs~~ an intoxicant.

24 (b) *Operating while revoked.* No person whose operating privilege has been
25 duly revoked under the laws of this state may knowingly operate a motor vehicle

BILL

1 upon any highway in this state during the period of revocation or in violation of any
2 restriction on an occupational license issued to the person during the period of
3 revocation. In this paragraph, “restriction on an occupational license” means
4 restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or
5 purpose of travel, vehicles allowed to be operated, use of an ignition interlock device,
6 sobriety, or use of alcohol, ~~controlled substances or controlled substance analogs~~ an
7 intoxicant.

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

9 344.576 (2) (b) The damage occurs while the renter or authorized driver
10 operates the private passenger vehicle in this state while under the influence of an
11 intoxicant ~~or other drug~~, as described under s. 346.63 (1) (a) or (b) or (2m).

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

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

16 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in
17 conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense
18 involved the use of a vehicle, may not be released until 12 hours have elapsed from
19 the time of his or her arrest or unless a chemical test administered under s. 343.305
20 shows that the person has an alcohol concentration of less than ~~0.04~~ 0.02, but the
21 person may be released to his or her attorney, spouse, relative, or other responsible
22 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.

BILL

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

2 346.17 (3) (b) If the violation results in bodily harm, ~~as defined in s. 939.22 (4),~~
3 to another, or causes damage to the property of another, as defined in s. 939.22 (28),
4 the person shall be fined not less than \$1,000 nor more than \$10,000 and may be
5 imprisoned for not more than 3 years.

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

7 346.17 (3) (c) If the violation results in great bodily harm, ~~as defined in s. 939.22~~
8 ~~(14),~~ to another, the person shall be fined not less than \$1,100 nor more than \$10,000
9 and may be imprisoned for not more than 3 years.

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

11 **346.61 Applicability of sections relating to reckless and drunken**
12 **driving.** In addition to being applicable upon highways, ss. 346.62 to 346.64 are
13 applicable upon all premises ~~held out to the public for use of their motor vehicles, all~~
14 ~~premises provided by employers to employees for the use of their motor vehicles and~~
15 ~~all premises provided to tenants of rental housing in buildings of 4 or more units for~~
16 ~~the use of their motor vehicles, whether such premises are publicly or privately~~
17 ~~owned and whether or not a fee is charged for the use thereof. Sections 346.62 to~~
18 ~~346.64 do not apply to private parking areas at farms or single family residences and~~
19 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.

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

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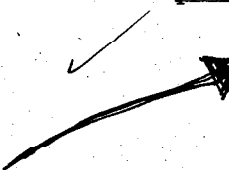

1 SECTION 36. 346.63 (title) of the statutes is amended to read:

2 **346.63 (title) Operating under influence of intoxicant or other drug.**

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

4 346.63 (1) (a) Under the influence of an intoxicant, ~~a controlled substance, a~~
5 ~~controlled substance analog or any combination of an intoxicant, a controlled~~
6 ~~substance and a controlled substance analog, under the influence of any other drug~~
7 ~~to a degree which renders him or her incapable of safely driving, or under the~~
8 ~~combined influence of an intoxicant and any other drug to a degree which renders~~
9 ~~him or her incapable of safely driving; or. A violation of this paragraph is not an~~
10 ~~included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).~~

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

 **Note:** 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. 

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

15 346.63 (2) (a) (intro.) It is unlawful for any person to cause ~~injury~~ bodily harm
16 to another person by the operation of a vehicle while:

17 1. Under the influence of an intoxicant, ~~a controlled substance, a controlled~~
18 ~~substance analog or any combination of an intoxicant, a controlled substance and a~~
19 ~~controlled substance analog, under the influence of any other drug to a degree which~~
20 ~~renders him or her incapable of safely driving, or under the combined influence of an~~
21 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~
22 ~~safely driving; or~~

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

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 SECTION 39 also prohibit the causing of bodily harm. The term "bodily harm"
is defined in SECTION 2 to mean physical pain or injury, illness or any impairment of
physical condition. The definition is adopted from s. 939.22 (4), stats.

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

11 346.63 (6) (a) No person may cause injury bodily harm to another person by the
12 operation of a commercial motor vehicle while the person has an alcohol
13 concentration of 0.04 or more but less than 0.1.

14 (c) Under par. (a), the person charged has a defense if it appears by a
15 preponderance of the evidence that the injury bodily harm would have occurred even
16 if he or she had not been under the influence of an intoxicant, ~~a controlled substance,~~
17 ~~a controlled substance analog or a combination thereof, under the influence of any~~
18 ~~other drug to a degree which renders him or her incapable of safely driving, or under~~
19 ~~the combined influence of an intoxicant and any other drug to a degree which renders~~
20 ~~him or her incapable of safely driving~~ or did not have an alcohol concentration
21 described under par. (a).

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

BILL

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

5 (2) The effects of alcohol, controlled substances or controlled substance
6 analogs, an intoxicant or the use of them in any combination an intoxicant, on a
7 person's ability to operate a motor vehicle.

8 **SECTION 41.** 346.65 (2) (e) of the statutes is amended to read:

9 346.65 (2) (e) Except as provided in pars. (f) and (g), shall be fined not less than
10 \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than
11 5 7 years and 6 months if the number of convictions under ss. 940.09 (1) and 940.25
12 in the person's lifetime, plus the total number of suspensions, revocations, and other
13 convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions,
14 revocations, or convictions arising out of the same incident or occurrence shall be
15 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.

16 **SECTION 42.** 346.65 (2) (g) 4. of the statutes is created to read:

17 346.65 (2) (g) 4. The increased fines provided in this paragraph do not apply
18 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 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 concentrations may not be applied if the penalty relating to a minor passenger under the age of 16 years is applicable to the offense.

BILL

1 **SECTION 43.** 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
5 community service work that demonstrates the adverse effects of substance abuse
6 or of operating a vehicle while under the influence of an intoxicant ~~or other drug~~,
7 including working at an alcoholism treatment facility approved under s. 51.45, an
8 emergency room of a general hospital, or a driver awareness program under s.
9 346.637. The court may order the person to pay a reasonable fee, based on the
10 person's ability to pay, to offset the cost of establishing, maintaining, and monitoring
11 the community service work ordered under this paragraph. If the opportunities
12 available to perform community service work are fewer in number than the number
13 of defendants eligible under this subsection, the court shall, when making an order
14 under this paragraph, give preference to defendants who were under 21 years of age
15 at the time of the offense. All provisions of par. (am) apply to any community service
16 work ordered under this 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
22 community service work that benefits children or that demonstrates the adverse
23 effects on children of substance abuse or of operating a vehicle while under the
24 influence of an intoxicant ~~or other drug~~. The court may order the person to pay a
25 reasonable fee, based on the person's ability to pay, to offset the cost of establishing,

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1 maintaining, and monitoring the community service work ordered under this
2 paragraph.

3 **(2i)** In addition to the authority of the court under sub. (2g) and s. 973.05 (3)
4 (a), the court may order a defendant subject to sub. (2), or a defendant subject to s.
5 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that
6 demonstrates the adverse effects of substance abuse or of operating a vehicle while
7 under the influence of an intoxicant ~~or other drug~~, including an alcoholism treatment
8 facility approved under s. 51.45 or an emergency room of a general hospital in lieu
9 of part or all of any forfeiture imposed or in addition to any penalty imposed. The
10 court may order the defendant to pay a reasonable fee, based on the person's ability
11 to pay, to offset the costs of establishing, maintaining, and monitoring the visits
12 ordered under this subsection. The court may order a visit to the site only if agreed
13 to by the person responsible for the site. If the opportunities available to visit sites
14 under this subsection are fewer than the number of defendants eligible for a visit,
15 the court shall, when making an order under this subsection, give preference to
16 defendants who were under 21 years of age at the time of the offense. The court shall
17 ensure that the visit is monitored. A visit to a site may be ordered for a specific time
18 and a specific day to allow the defendant to observe victims of vehicle accidents
19 involving intoxicated drivers. If it appears to the court that the defendant has not
20 complied with the court order to visit a site or to pay a reasonable fee, the court may
21 order the defendant to show cause why he or she should not be held in contempt of
22 court. Any organization or agency acting in good faith to which a defendant is
23 assigned pursuant to an order under this subsection has immunity from any civil
24 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.
25 The issuance or possibility of the issuance of an order under this subsection does not

BILL

1 entitle an indigent defendant who is subject to sub. (2) (a) to representation by
2 counsel under ch. 977.

3 **SECTION 44.** 346.65 (2q) and (2u) (a) of the statutes are amended to read:

4 346.65 (2q) Any person violating s. 346.63 (2m) shall forfeit \$10. If there was
5 a minor passenger under 16 years of age in the motor vehicle at the time of the
6 violation that gave rise to the conviction under 346.63 (2m), the forfeiture is \$20 \$50.

7 (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 this absolute sobriety provision will result in a forfeiture of \$50, regardless of whether there was a minor passenger in the motor vehicle at the time of the violation.

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.

8 **SECTION 45.** 346.65 (3m) and (7) of the statutes are amended to read:

9 346.65 (3m) Any person violating s. 346.63 (2) or (6) shall be fined not less than
10 \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more
11 than one year in the county jail. If there was a minor passenger under 16 years of
12 age in the motor vehicle at the time of the violation that gave rise to the conviction
13 under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and
14 maximum fines or periods of imprisonment for the conviction are doubled, and the
15 place of imprisonment shall be determined under s. 973.02.

16 (7) A person convicted sentenced to imprisonment under sub. (2) (b), (c), (d),
17 or (e) ~~or~~, (2j) (b) or (c), or (3m) shall be required to remain in the county jail for not
18 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

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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.

1 **SECTION 46.** 346.65 (8) of the statutes is created to read:

2 346.65 (8) When sentencing a person convicted for a violation of s. 346.63 (1),
3 (2), or (6), a court may order the payment of restitution, using the applicable
4 procedures under s. 800.093 or 973.20, for property damage caused by the person in
5 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.

6 **SECTION 47.** 346.66 of the statutes is amended to read:

7 **346.66 Applicability of sections relating to accidents and accident**
8 **reporting.** In addition to being applicable upon highways, ss. 346.67 to 346.70 are
9 applicable upon frozen waters, all premises held out to the public for use of their
10 motor vehicles, all premises provided by employers to employees for the use of their
11 motor vehicles, and all premises provided to tenants of rental housing in buildings
12 of 4 or more units for the use of their motor vehicles, whether such premises are
13 publicly or privately owned and whether or not a fee is charged for the use thereof.
14 These sections do not apply to private parking areas at farms or single-family
15 residences or to accidents involving only snowmobiles, all-terrain vehicles, or
16 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

BILL

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.

1 **SECTION 48.** 351.02 (1) (a) 10. of the statutes is amended to read:

2 351.02 (1) (a) 10. Any offense under the law of another jurisdiction prohibiting
3 conduct described in sections 6-207, 6-302, 10-102, 10-103, 10-104, 11-901,
4 11-902, 11-907 or 11-908 of the uniform vehicle code and model traffic ordinance
5 (1987), or prohibiting homicide or manslaughter resulting from the operation of a
6 motor vehicle, use of a motor vehicle in the commission of a felony, reckless or careless
7 driving or driving a motor vehicle with wilful or wanton disregard for the safety of
8 persons or property, driving or operating a motor vehicle while under the influence
9 of alcohol, ~~a controlled substance, a controlled substance analog or any other drug~~
10 ~~or a combination thereof as prohibited~~ an intoxicant, refusal to submit to chemical
11 testing, perjury or the making false statements or affidavits to a governmental
12 agency in connection with the ownership or operation of a motor vehicle, failing to
13 stop and identify oneself as the driver or operator in the event of a motor vehicle
14 accident with a person or an attended motor vehicle or fleeing from or attempting to
15 elude a police, law enforcement or other peace officer, as those or substantially
16 similar terms are used in that jurisdiction's laws.

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

18 800.08 (5) In municipal court, the results of a blood alcohol analysis, as shown
19 by a certified copy of the analysis, are admissible, unless the defendant makes a
20 written request to the municipal court for the personal appearance of the blood
21 analyst and the person who drew the blood. The request shall be made not later than
22 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

BILL

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) and (c) of the statutes are repealed and recreated
2 to read:

3 885.235 (1) (b) "Intoxicant" has the meaning given in s. 939.22 (19m).

4 (c) "Under the influence of an intoxicant" has the meaning given in s. 939.22
5 (42).

6 **SECTION 51.** 885.235 (1) (bd) of the statutes is repealed.

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

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

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

18 **SECTION 53.** 895.53 (2) of the statutes is amended to read:

19 895.53 (2) Any person withdrawing blood at the request of a traffic officer, law
20 enforcement officer or conservation warden for the purpose of determining the
21 presence or quantity of alcohol, controlled substances, controlled substance analogs
22 or any combination of alcohol, controlled substances and controlled substance
23 analogs an intoxicant, as defined in s. 340.01 (25d), is immune from any civil or

BILL

1 criminal liability for the act, except for civil liability for negligence in the
2 performance of the act.

3 **SECTION 54.** 939.22 (19m) of the statutes is created to read:

4 **939.22 (19m)** "Intoxicant" means any of the following:

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

7 (b) Any combination of alcohol, a controlled substance, a controlled substance
8 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 (25d) as created in SECTION 3
of the bill.

9 **SECTION 55.** 939.22 (42) of the statutes is repealed and recreated to read:

10 **939.22 (42)** "Under the influence of an intoxicant" means any of the following:

11 (a) A condition in which a person's ability to operate a vehicle, because of the
12 consumption or use of an intoxicant, is impaired to the extent that the person is less
13 able to exercise the clear judgment and steady hand necessary to handle and control
14 a vehicle.

15 (b) A condition in which a person's ability to handle a firearm or airgun is
16 materially impaired because of the consumption or use 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 repealed and recreated to
conform to the definition of the same term in s. 340.01 (73e) as created in SECTION 3 of the
bill.

17 **SECTION 56.** 949.08 (2) (e) and (em) of the statutes are amended to read:

18 **949.08 (2) (e)** Is an adult passenger in the offender's vehicle and the crime
19 involved is specified in s. 346.63 (2) or 940.25 and the passenger knew the offender
20 was under the influence of an intoxicant, ~~a controlled substance, a controlled~~
21 ~~substance analog or any combination of an intoxicant, controlled substance and~~

BILL

1 ~~controlled substance analog, or had a prohibited alcohol concentration, as defined in~~
2 ~~s. 340.01 (46m). This paragraph does not apply if the victim is also a victim of a crime~~
3 ~~specified in s. 940.30, 940.305, 940.31 or 948.30.~~

4 (em) Is an adult passenger in the offender's commercial motor vehicle and the
5 crime involved is specified in s. 346.63 (6) or 940.25 and the passenger knew the
6 offender was under the influence of an intoxicant, ~~a controlled substance, a~~
7 ~~controlled substance analog or any combination of an intoxicant, controlled~~
8 ~~substance and controlled substance analog, or had an alcohol concentration of 0.04~~
9 ~~or more but less than 0.1. This paragraph does not apply if the victim is also a victim~~
10 ~~of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.~~

11 SECTION 57. 967.055 (title) and (1) (a) of the statutes are amended to read:

12 **967.055 (title) Prosecution of offenses; operation of a motor vehicle or**
13 **motorboat; alcohol, or intoxicant ~~or drug~~.** (1) (a) The legislature intends to
14 encourage the vigorous prosecution of offenses concerning the operation of motor
15 vehicles by persons under the influence of an intoxicant, ~~a controlled substance, a~~
16 ~~controlled substance analog or any combination of an intoxicant, controlled~~
17 ~~substance and controlled substance analog, under the influence of any other drug to~~
18 ~~a degree which renders him or her incapable of safely driving, or under the combined~~
19 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~
20 ~~incapable of safely driving as defined in s. 340.01 (25d), or having a prohibited alcohol~~
21 ~~concentration, as defined in s. 340.01 (46m), or offenses concerning the operation of~~
22 ~~commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.~~

23 SECTION 58. 967.055 (1m) of the statutes is repealed.

24 SECTION 59. 967.055 (2) (a) of the statutes is amended to read:

BILL

1 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
2 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity
3 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the
4 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply
5 to the court. The application shall state the reasons for the proposed amendment or
6 dismissal. The court may approve the application only if the court finds that the
7 proposed amendment or dismissal is consistent with the public's interest in deterring
8 the operation of motor vehicles by persons who are under the influence of an
9 intoxicant, ~~a controlled substance, a controlled substance analog or any combination~~
10 ~~of an intoxicant, controlled substance and controlled substance analog, under the~~
11 ~~influence of any other drug to a degree which renders him or her incapable of safely~~
12 ~~driving, or under the combined influence of an intoxicant and any other drug to a~~
13 ~~degree which renders him or her incapable of safely driving~~ as defined in s. 340.01
14 (25d), or in deterring the operation of commercial motor vehicles by persons with an
15 alcohol concentration of 0.04 or more. The court may not approve an application to
16 amend the vehicle classification from a commercial motor vehicle to a noncommercial
17 motor vehicle unless there is evidence in the record that the motor vehicle being
18 operated by the defendant at the time of his or her arrest was not a commercial motor
19 vehicle.

SECTION 60. Initial applicability.

20 **SECTION 60. Initial applicability.**
21 (1) This act first applies to violations committed or refusals occurring on the
22 effective date of this subsection, but does not preclude the counting of other
23 convictions, suspensions, or revocations as prior convictions, suspensions, or
24 revocations for purposes of administrative action by the department of

BILL

1 transportation, sentencing by a court, or revocation or suspension of motor vehicle
2 operating privileges.

3 **SECTION 61. Effective date.**

4 (1) This act takes effect on January 1, 2003.

5 (END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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November 5, 2001

MEMORANDUM

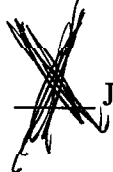
To: Legislative Council - JLC

From: Peggy J. Hurley, Legislative Attorney

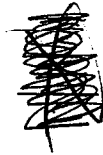
*Needs
Senate
Companion*

Re: LRB-3047/2 Operating sports recreation vehicles while intoxicated

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.



JACKET FOR ASSEMBLY



JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-8906 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266 3561 if you have any questions regarding this memorandum.