



## 2001 SENATE BILL 338

December 6, 2001 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to  
Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

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);

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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.

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***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.

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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 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.

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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.

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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:

“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:

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1           343.16 (5) (a) The secretary may require any applicant for a license or any  
2 licensed operator to submit to a special examination by such persons or agencies as  
3 the secretary may direct to determine incompetency, physical or mental disability,  
4 disease, or any other condition which might prevent such applicant or licensed  
5 person from exercising reasonable and ordinary control over a motor vehicle. When  
6 the department requires the applicant to submit to an examination, the applicant  
7 shall pay the cost thereof. If the department receives an application for a renewal  
8 or duplicate license after voluntary surrender under s. 343.265 or receives a report  
9 from a physician or optometrist under s. 146.82 (3), or if the department has a report  
10 of 2 or more arrests within a one-year period for any combination of violations of s.  
11 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally  
12 recognized American Indian tribe or band in this state in conformity with s. 346.63  
13 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09  
14 where the offense involved the use of a vehicle, the department shall determine, by  
15 interview or otherwise, whether the operator should submit to an examination under  
16 this section. The examination may consist of an assessment. If the examination  
17 indicates that education or treatment for a disability, disease, or condition  
18 concerning the use of alcohol, ~~a controlled substance or a controlled substance analog~~  
19 an intoxicant is appropriate, the department may order a driver safety plan in  
20 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the  
21 driver safety plan, the department shall revoke the person's operating privilege in  
22 the manner specified in s. 343.30 (1q) (d).

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

24           343.30 (1g) (a) Except as provided in ~~par. pars.~~ (b) and (c), a court may suspend  
25 a person's operating privilege for any period not exceeding 6 months upon the

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1 person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in  
2 conformity therewith.

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

4 343.30 (1g) (b) ~~A~~ Except as provided in par. (c), a court shall revoke a person's  
5 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or  
6 (d) or a local ordinance in conformity therewith if the person has been convicted of  
7 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under  
8 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the  
9 5-year period preceding the violation. The revocation shall be for a period of 6  
10 months, unless the court orders a period of revocation of less than 6 months and  
11 places its reasons for ordering the lesser period of revocation on the record.

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

13 343.30 (1g) (c) A court shall suspend a person's operating privilege upon the  
14 person's conviction under s. 343.44 for violating s. 343.10 (5) (a) 3. or under s.  
15 347.413. The revocation shall be for a period of not less than 6 months nor more than  
16 9 months. If a person is convicted under s. 347.413, the person is eligible for an  
17 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.

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

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

10           **SECTION 10.** 343.30 (1q) (d) of the statutes, as affected by 1997 Wisconsin Act  
11 84, is amended to read:

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

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

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1 person's operating privilege until the review is completed, unless the delay is at the  
2 request of the person seeking the review.

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

4 343.30 (1q) (h) The court or department shall provide that the period of  
5 suspension or revocation imposed under this subsection shall be reduced by any  
6 period of suspension or revocation previously served under s. 343.305 if the  
7 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63  
8 (1) or (2m) or a local ordinance in conformity therewith arise out of the same incident  
9 or occurrence. The court or department shall order that the period of suspension or  
10 revocation imposed under this subsection run concurrently with any period of time  
11 remaining on a suspension or revocation imposed under s. 343.305 arising out of the  
12 same incident or occurrence. The court or department shall order that any period  
13 of time that must expire before a person is eligible for an occupational license under  
14 this subsection be reduced by any similar period previously expired under s. 343.305  
15 if the suspension or revocation under s. 343.305 and the conviction for violation of  
16 s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same  
17 incident or occurrence. The court or department shall order that any period of time  
18 that must expire before a person is eligible for an occupational license under this  
19 subsection run concurrently with any similar period of time remaining under s.  
20 343.305 arising out of the same incident or occurrence. The court may modify an  
21 occupational license authorized under s. 343.305 (8) (d) in accordance with this  
22 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.,

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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.

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

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1 person shall be arrested for a violation of s. 346.63 (1), (2m), (5), or (7) or a local  
2 ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1), or 940.25 and  
3 whether or not to require or request chemical tests as authorized under s. 343.305  
4 (3).

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

11 **(4)** The general penalty provision under s. 939.61 (1) does not apply to a refusal  
12 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.

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

15 343.305 (2) IMPLIED CONSENT. Any person who is on duty time with respect to  
16 a commercial motor vehicle or drives or operates a motor vehicle upon the public  
17 highways of this state, or in those areas enumerated in s. 346.61, is deemed to have  
18 given consent to one or more tests of his or her breath, blood, or urine, for the purpose

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1 of determining the presence or quantity of an intoxicant in his or her ~~blood or breath,~~  
2 ~~of alcohol, controlled substances, controlled substance analogs or other drugs, or any~~  
3 ~~combination of alcohol, controlled substances, controlled substance analogs and~~  
4 ~~other drugs~~ breath, blood, or urine, when requested to do so by a law enforcement  
5 officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (b). Any such  
6 tests shall be administered upon the request of a law enforcement officer. The law  
7 enforcement agency by which the officer is employed shall be prepared to administer,  
8 either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a)  
9 or (am), and may designate which of the tests shall be administered first.

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

20 (b) A person who is unconscious or otherwise not capable of withdrawing  
21 consent is presumed not to have withdrawn consent under this subsection, and if a  
22 law enforcement officer has probable cause to believe that the person has violated  
23 s. 346.63 (1), (2m), or (5) or a local ordinance in conformity therewith, or s. 346.63 (2)  
24 or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects  
25 any presence of ~~alcohol, controlled substance, controlled substance analog or other~~

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1     ~~drug, or a combination thereof,~~ an intoxicant on a person driving or operating or on  
2     duty time with respect to a commercial motor vehicle or has reason to believe the  
3     person has violated s. 346.63 (7), one or more ~~samples~~ tests specified in par. (a) or  
4     (am) may be administered to the person.

5             **(4)** (form)

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

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

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

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

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

9           **SECTION 14.** 343.305 (5) (d) of the statutes is repealed and recreated to read:  
10           343.305 **(5)** (d) The results of a test administered in accordance with this  
11           section are admissible on the issue of whether a person was under the influence of  
12           an intoxicant or any issue relating to the person's alcohol concentration in a civil or  
13           criminal proceeding in which the person is alleged to have done any of the following:  
14           1. Driven or operated a motor vehicle while under the influence of an  
15           intoxicant.  
16           2. Had a prohibited alcohol concentration.  
17           3. Driven or operated or been on duty time with respect to a commercial motor  
18           vehicle in violation of s. 346.63 (7).

19           **SECTION 15.** 343.305 (5) (e) of the statutes is created to read:  
20           343.305 **(5)** (e) Test results under this section shall be given the effect required  
21           under s. 885.235.

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

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1           343.305 (6) (a) Chemical analyses of blood or urine to be considered valid under  
2 this section shall have been performed substantially according to methods approved  
3 by the laboratory of hygiene and by an individual possessing a valid permit to  
4 perform the analyses issued by the department of health and family services. The  
5 department of health and family services shall approve laboratories for the purpose  
6 of performing chemical analyses of blood or urine for ~~alcohol, controlled substances~~  
7 ~~or controlled substance analogs~~ an intoxicant and shall develop and administer a  
8 program for regular monitoring of the laboratories. A list of approved laboratories  
9 shall be provided to all law enforcement agencies in the state. Urine specimens are  
10 to be collected by methods specified by the laboratory of hygiene. The laboratory of  
11 hygiene shall furnish an ample supply of urine and blood specimen containers to  
12 permit all law enforcement officers to comply with the requirements of this section.

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

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

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

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

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

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

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

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

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1           343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
2           respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law  
3           enforcement officer shall immediately take possession of the person's license, issue  
4           an out-of-service order to the person for the 24 hours after the refusal and notify the  
5           department in the manner prescribed by the department, and prepare a notice of  
6           intent to revoke, by court order under sub. (10), the person's operating privilege. The  
7           officer shall issue a copy of the notice of intent to revoke the privilege to the person  
8           and submit or mail a copy with the person's license to the clerk of the circuit court  
9           for the county in which the refusal is made. The officer shall also mail a copy of the  
10          notice of intent to revoke to the district attorney for that county and the department.  
11          The notice of intent to revoke the person's operating privilege shall contain  
12          substantially all of the following information:

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

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

19          343.305 (9) (am) 5. a. Whether the officer detected any presence of ~~alcohol,~~  
20          ~~controlled substance, controlled substance analog or other drug, or a combination~~  
21          ~~thereof,~~ an intoxicant on the person or had reason to believe that the person was  
22          violating or had violated s. 346.63 (7).

23          c. Whether the person refused to permit the test. The person shall not be  
24          considered to have refused the test if it is shown by a preponderance of evidence that  
25          the refusal was due to a physical inability to submit to the test due to a physical

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1 disability or disease unrelated to the use of alcohol, controlled substances, controlled  
2 substance analogs or other drugs an intoxicant.

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.

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

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

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

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

20 **SECTION 23.** 343.305 (10) (d) of the statutes, as affected by 1997 Wisconsin Act  
21 84, is amended to read:

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1           343.305 (10) (d) The assessment report shall order compliance with a driver  
2 safety plan. The report shall inform the person of the fee provisions under s. 46.03  
3 (18) (f). The driver safety plan may include a component that makes the person  
4 aware of the effect of his or her offense on a victim and a victim's family. The driver  
5 safety plan may include treatment for the person's misuse, abuse, or dependence on  
6 ~~alcohol, controlled substances or controlled substance analogs,~~ an intoxicant or  
7 attendance at a school under s. 345.60, or both. If the plan requires inpatient  
8 treatment, the treatment shall not exceed 30 days. A driver safety plan under this  
9 paragraph shall include a termination date consistent with the plan which shall not  
10 extend beyond one year. The county department under s. 51.42 shall assure  
11 notification of the department of transportation and the person of the person's  
12 compliance or noncompliance with assessment and treatment. The school under s.  
13 345.60 shall notify the department, the county department under s. 51.42, and the  
14 person of the person's compliance or noncompliance with the requirements of the  
15 school. Nonpayment of the assessment fee or, if the person has the ability to pay,  
16 nonpayment of the driver safety plan fee is noncompliance with the court order. If  
17 the department is notified of noncompliance, other than for nonpayment of the  
18 assessment fee or driver safety plan fee, it shall revoke the person's operating  
19 privilege until the county department under s. 51.42 or the school under s. 345.60  
20 notifies the department that the person is in compliance with assessment or the  
21 driver safety plan. If the department is notified that a person has not paid the  
22 assessment fee, or that a person with the ability to pay has not paid the driver safety  
23 plan fee, the department shall suspend the person's operating privilege for a period  
24 of 2 years or until it receives notice that the person has paid the fee, whichever occurs  
25 first. The department shall notify the person of the suspension or revocation, the

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1 reason for the suspension or revocation, and the person's right to a review. A person  
2 may request a review of a revocation based upon failure to comply with a driver safety  
3 plan within 10 days of notification. The review shall be handled by the subunit of  
4 the department of transportation designated by the secretary. The issues at the  
5 review are limited to whether the driver safety plan, if challenged, is appropriate and  
6 whether the person is in compliance with the assessment order or the driver safety  
7 plan. The review shall be conducted within 10 days after a request is received. If the  
8 driver safety plan is determined to be inappropriate, the department shall order a  
9 reassessment and if the person is otherwise eligible, the department shall reinstate  
10 the person's operating privilege. If the person is determined to be in compliance with  
11 the assessment or driver safety plan, and if the person is otherwise eligible, the  
12 department shall reinstate the person's operating privilege. If there is no decision  
13 within the 10-day period, the department shall issue an order reinstating the  
14 person's operating privilege until the review is completed, unless the delay is at the  
15 request of the person seeking the review.

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

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

24 (2) (e) Convictions under the law of another jurisdiction that prohibits refusal  
25 of chemical testing or use of a motor vehicle while intoxicated or under the influence

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

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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:

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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

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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

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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.~~

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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).

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.

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

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

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

7           (b) In an action under this subsection, the defendant has a defense if he or she  
8 proves by a preponderance of the evidence that the ~~injury~~ bodily harm would have  
9 occurred even if he or she had been exercising due care and he or she had not been  
10 under the influence of an intoxicant, ~~a controlled substance, a controlled substance~~  
11 ~~analog or a combination thereof, under the influence of any other drug to a degree~~  
12 ~~which renders him or her incapable of safely driving, or under the combined~~  
13 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
14 ~~incapable of safely driving or did not have a prohibited alcohol concentration~~  
15 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.

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

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

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

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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).

6 **SECTION 40.** 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 41.** 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.

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

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1           346.65 (2) (g) 4. The increased fines provided in this paragraph do not apply  
2 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.

3           **SECTION 43.** 346.65 (2g) (b) and (c) and (2i) of the statutes are amended to read:

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

19           (c) If there was a minor passenger under 16 years of age in the motor vehicle  
20 or commercial motor vehicle at the time of the violation that gave rise to the

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1 conviction, the court may require a person ordered to perform community service  
2 work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine resulted from  
3 violating s. 346.63 (2), (5) (a), or (6) (a), 940.09 (1), or 940.25, to participate in  
4 community service work that benefits children or that demonstrates the adverse  
5 effects on children of substance abuse or of operating a vehicle while under the  
6 influence of an intoxicant ~~or other drug~~. The court may order the person to pay a  
7 reasonable fee, based on the person's ability to pay, to offset the cost of establishing,  
8 maintaining, and monitoring the community service work ordered under this  
9 paragraph.

10 **(2i)** In addition to the authority of the court under sub. (2g) and s. 973.05 (3)  
11 (a), the court may order a defendant subject to sub. (2), or a defendant subject to s.  
12 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that  
13 demonstrates the adverse effects of substance abuse or of operating a vehicle while  
14 under the influence of an intoxicant ~~or other drug~~, including an alcoholism treatment  
15 facility approved under s. 51.45 or an emergency room of a general hospital in lieu  
16 of part or all of any forfeiture imposed or in addition to any penalty imposed. The  
17 court may order the defendant to pay a reasonable fee, based on the person's ability  
18 to pay, to offset the costs of establishing, maintaining, and monitoring the visits  
19 ordered under this subsection. The court may order a visit to the site only if agreed  
20 to by the person responsible for the site. If the opportunities available to visit sites  
21 under this subsection are fewer than the number of defendants eligible for a visit,  
22 the court shall, when making an order under this subsection, give preference to  
23 defendants who were under 21 years of age at the time of the offense. The court shall  
24 ensure that the visit is monitored. A visit to a site may be ordered for a specific time  
25 and a specific day to allow the defendant to observe victims of vehicle accidents

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1 involving intoxicated drivers. If it appears to the court that the defendant has not  
2 complied with the court order to visit a site or to pay a reasonable fee, the court may  
3 order the defendant to show cause why he or she should not be held in contempt of  
4 court. Any organization or agency acting in good faith to which a defendant is  
5 assigned pursuant to an order under this subsection has immunity from any civil  
6 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.  
7 The issuance or possibility of the issuance of an order under this subsection does not  
8 entitle an indigent defendant who is subject to sub. (2) (a) to representation by  
9 counsel under ch. 977.

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

11 346.65 **(2q)** Any person violating s. 346.63 (2m) shall forfeit \$10. ~~If there was~~  
12 ~~a minor passenger under 16 years of age in the motor vehicle at the time of the~~  
13 ~~violation that gave rise to the conviction under 346.63 (2m), the forfeiture is \$20~~ \$50.

14 **(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.

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

16 346.65 **(3m)** Any person violating s. 346.63 (2) or (6) shall be fined not less than  
17 \$300 nor more than \$2,000 and may be imprisoned for not less than ~~30 days~~ nor more  
18 than one year in the county jail. If there was a minor passenger under 16 years of  
19 age in the motor vehicle at the time of the violation that gave rise to the conviction

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1 under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and  
2 maximum fines or periods of imprisonment for the conviction are doubled, and the  
3 place of imprisonment shall be determined under s. 973.02.

4 **(7)** A person ~~convicted~~ sentenced to imprisonment under sub. (2) (b), (c), (d),  
5 or (e) ~~or~~, (2j) (b) or (c), or (3m) shall be required to remain in the county jail for not  
6 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.

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

8 346.65 (8) When sentencing a person convicted for a violation of s. 346.63 (1),  
9 (2), or (6), a court may order the payment of restitution, using the applicable  
10 procedures under s. 800.093 or 973.20, for property damage caused by the person in  
11 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.

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

13 **346.66 Applicability of sections relating to accidents and accident**  
14 **reporting.** In addition to being applicable upon highways, ss. 346.67 to 346.70 are  
15 applicable upon frozen waters, all premises held out to the public for use of their  
16 motor vehicles, all premises provided by employers to employees for the use of their  
17 motor vehicles, and all premises provided to tenants of rental housing in buildings  
18 of 4 or more units for the use of their motor vehicles, whether such premises are

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1 publicly or privately owned and whether or not a fee is charged for the use thereof.  
2 These sections do not apply to private parking areas at farms or single-family  
3 residences or to accidents involving only snowmobiles, all-terrain vehicles, or  
4 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.

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

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

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

2           800.08 (5) In municipal court, the results of a blood alcohol analysis, as shown  
3 by a certified copy of the analysis, are admissible, unless the defendant makes a  
4 written request to the municipal court for the personal appearance of the blood  
5 analyst and the person who drew the blood. The request shall be made not later than  
6 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.

7           **SECTION 50.** 885.235 (1) (b) and (c) of the statutes are repealed and recreated  
8 to read:

9           885.235 (1) (b) "Intoxicant" has the meaning given in s. 939.22 (19m).

10          (c) "Under the influence of an intoxicant" has the meaning given in s. 939.22  
11 (42).

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

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

14          885.235 (1g) (a) 1. The fact that the analysis shows that the person had an  
15 alcohol concentration of more than 0.0 but less than 0.08 is relevant evidence on the  
16 issue of being under the combined influence of alcohol and a controlled substance,  
17 a controlled substance analog or any other drug an intoxicant, but, except as  
18 provided in par. (d) or sub. (1m), is not to be given any prima facie effect.

19          2. The fact that the analysis shows that the person had an alcohol concentration  
20 of more than 0.0 but less than 0.1 is relevant evidence on the issue of being under the  
21 combined influence of alcohol and a controlled substance, a controlled substance

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1     ~~analog or any other drug~~ an intoxicant but, except as provided in par. (d) or sub. (1m),  
2     is not to be given any prima facie effect.

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

4             895.53 (2) Any person withdrawing blood at the request of a traffic officer, law  
5     enforcement officer or conservation warden for the purpose of determining the  
6     presence or quantity of ~~alcohol, controlled substances, controlled substance analogs~~  
7     ~~or any combination of alcohol, controlled substances and controlled substance~~  
8     ~~analog~~ an intoxicant, as defined in s. 340.01 (25d), is immune from any civil or  
9     criminal liability for the act, except for civil liability for negligence in the  
10    performance of the act.

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

12            939.22 (19m) "Intoxicant" means any of the following:

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

15            (b) Any combination of alcohol, a controlled substance, a controlled substance  
16    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.

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

18            939.22 (42) "Under the influence of an intoxicant" means any of the following:

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

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1 (b) A condition in which a person's ability to handle a firearm or airgun is  
2 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.

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

4 949.08 (2) (e) Is an adult passenger in the offender's vehicle and the crime  
5 involved is specified in s. 346.63 (2) or 940.25 and the passenger knew the offender  
6 was under the influence of an intoxicant, ~~a controlled substance, a controlled~~  
7 ~~substance analog or any combination of an intoxicant, controlled substance and~~  
8 ~~controlled substance analog,~~ or had a prohibited alcohol concentration, as defined in  
9 s. 340.01 (46m). This paragraph does not apply if the victim is also a victim of a crime  
10 specified in s. 940.30, 940.305, 940.31 or 948.30.

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

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

19 **967.055 (title) Prosecution of offenses; operation of a motor vehicle or**  
20 **motorboat; alcohol, or intoxicant ~~or drug.~~ (1) (a)** The legislature intends to  
21 encourage the vigorous prosecution of offenses concerning the operation of motor  
22 vehicles by persons under the influence of an intoxicant, ~~a controlled substance, a~~  
23 ~~controlled substance analog or any combination of an intoxicant, controlled~~

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1 ~~substance and controlled substance analog, under the influence of any other drug to~~  
2 ~~a degree which renders him or her incapable of safely driving, or under the combined~~  
3 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
4 ~~incapable of safely driving~~ as defined in s. 340.01 (25d), or having a prohibited alcohol  
5 concentration, as defined in s. 340.01 (46m), or offenses concerning the operation of  
6 commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.

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

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

9 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss  
10 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity  
11 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the  
12 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply  
13 to the court. The application shall state the reasons for the proposed amendment or  
14 dismissal. The court may approve the application only if the court finds that the  
15 proposed amendment or dismissal is consistent with the public's interest in deterring  
16 the operation of motor vehicles by persons who are under the influence of an  
17 intoxicant, ~~a controlled substance, a controlled substance analog or any combination~~  
18 ~~of an intoxicant, controlled substance and controlled substance analog, under the~~  
19 ~~influence of any other drug to a degree which renders him or her incapable of safely~~  
20 ~~driving, or under the combined influence of an intoxicant and any other drug to a~~  
21 ~~degree which renders him or her incapable of safely driving~~ as defined in s. 340.01  
22 (25d), or in deterring the operation of commercial motor vehicles by persons with an  
23 alcohol concentration of 0.04 or more. The court may not approve an application to  
24 amend the vehicle classification from a commercial motor vehicle to a noncommercial  
25 motor vehicle unless there is evidence in the record that the motor vehicle being

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1 operated by the defendant at the time of his or her arrest was not a commercial motor  
2 vehicle.

3 **SECTION 60. Initial applicability.**

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

10 **SECTION 61. Effective date.**

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

12 (END)