

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 344**

May 19, 2005 – Offered by Representatives MUSSER and TOWNSEND.

1 **AN ACT** *to amend* 343.23 (2) (b), 346.65 (2) (b), 346.65 (2) (c), 346.65 (2) (d), 346.65
2 (2) (e) and 346.65 (2c); and *to create* 346.65 (2d) of the statutes; **relating to:**
3 operating while intoxicated and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) maintains a driving record for every person who possesses a driver's license. When DOT receives notice that a person was convicted of an offense relating to operating certain vehicles while intoxicated or operating certain vehicles with a prohibited blood alcohol concentration (OWI-related offense), that information is kept permanently in the person's driving record. Also under current law, when a person commits an OWI-related offense, the court is required to consider the number of previous OWI-related offenses committed by the person to determine the person's penalty.

2003 Wisconsin Act 30 requires DOT to purge the record of a first violation from a driver's record if the person who committed the violation had a blood alcohol concentration between 0.08 and 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person operating a commercial motor vehicle, and if the person does not commit another alcohol-related driving offense during the ten-year period following the violation.

This substitute amendment eliminates the requirements that DOT retain or purge certain OWI-related records, but forbids courts to count, for the purposes of

determining a penalty, any OWI-related offense that occurred within ten years of another OWI-related offense, so long as the offense does not involve causing serious bodily injury or death to another person.

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

1 **SECTION 1.** 343.23 (2) (b) of the statutes, as affected by 2003 Wisconsin Acts 30,
2 33 and 320, is amended to read:

3 343.23 **(2)** (b) The information specified in pars. (a) and (am) must be filed by
4 the department so that the complete operator's record is available for the use of the
5 secretary in determining whether operating privileges of such person shall be
6 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
7 of public safety. ~~The record of suspensions, revocations, and convictions that would~~
8 ~~be counted under s. 343.307 (2) shall be maintained permanently, except that the~~
9 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
10 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
11 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
12 ~~time of the violation, if the person does not have a commercial driver license, if the~~
13 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
14 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
15 ~~under s. 343.307 during that 10-year period.~~ The record of convictions for
16 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
17 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and
18 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The
19 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be
20 maintained permanently, except that 5 years after a licensee transfers residency to

1 another state such record may be transferred to another state of licensure of the
2 licensee if that state accepts responsibility for maintaining a permanent record of
3 convictions for disqualifying offenses. Such reports and records may be cumulative
4 beyond the period for which a license is granted, but the secretary, in exercising the
5 power of suspension granted under s. 343.32 (2) may consider only those reports and
6 records entered during the 4-year period immediately preceding the exercise of such
7 power of suspension.

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

9 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$350
10 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months
11 if the number of convictions under ~~ss. 940.09 (1) and 940.25 in the person's lifetime,~~
12 ~~plus the total number of suspensions, revocations and other convictions counted~~
13 ~~under s. 343.307 (1) within a 10-year period,~~ occurrences counted under sub. (2d)
14 equals 2, ~~except that suspensions, revocations or convictions arising out of the same~~
15 ~~incident or occurrence shall be counted as one.~~

16 **SECTION 3.** 346.65 (2) (c) of the statutes is amended to read:

17 346.65 (2) (c) Except as provided in pars. (f) and (g), shall be fined not less than
18 \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than
19 one year in the county jail if the number of convictions under ~~ss. 940.09 (1) and 940.25~~
20 ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~
21 ~~convictions counted under s. 343.307 (1),~~ occurrences counted under sub. (2d) equals
22 3, ~~except that suspensions, revocations or convictions arising out of the same~~
23 ~~incident or occurrence shall be counted as one.~~

24 **SECTION 4.** 346.65 (2) (d) of the statutes is amended to read:

1 346.65 (2) (d) Except as provided in pars. (f) and (g), shall be fined not less than
2 \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than
3 one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~
4 ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~
5 ~~convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals~~
6 4, ~~except that suspensions, revocations or convictions arising out of the same~~
7 ~~incident or occurrence shall be counted as one.~~

8 **SECTION 5.** 346.65 (2) (e) of the statutes is amended to read:

9 346.65 (2) (e) Except as provided in pars. (f) and (g), is guilty of a Class H felony
10 and shall be fined not less than \$600 and imprisoned for not less than 6 months if
11 the number of ~~convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,~~
12 ~~plus the total number of suspensions, revocations and other convictions counted~~
13 ~~under s. 343.307 (1), occurrences counted under sub. (2d) equals 5 or more, except~~
14 ~~that suspensions, revocations or convictions arising out of the same incident or~~
15 ~~occurrence shall be counted as one.~~

16 **SECTION 6.** 346.65 (2c) of the statutes is amended to read:

17 346.65 (2c) In sub. (2) (b) to (e) (2d), the time period shall be measured from
18 the dates of the refusals or violations that resulted in the revocation or convictions.
19 If a person has a suspension, revocation or conviction for any offense under a local
20 ordinance or a state statute of another state that would be counted under s. 343.307
21 (1), that suspension, revocation or conviction shall count as a prior suspension,
22 revocation or conviction under sub. (2) (b) to (e) (2d).

23 **SECTION 7.** 346.65 (2d) of the statutes is created to read:

24 346.65 (2d) In sub. (2) (b) to (e), the court shall count the number of convictions
25 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of

1 suspensions, revocations, and other convictions counted under s. 343.307 (1), except
2 that:

3 (a) The court shall count any suspensions, revocations, or convictions arising
4 out of the same incident or occurrence as one.

5 (b) The court shall not count any suspension, revocation, or conviction counted
6 under s. 343.307 (1) not arising out of the same incident or occurrence and not
7 occurring within 10 years of another suspension, revocation, or occurrence. This
8 paragraph shall not apply to convictions under ss. 940.09 (1) and 940.25.

9 **SECTION 8. Effective date.**

10 (1) This act takes effect on September 30, 2005.

11 (END)