

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB344)

Received: 05/17/2005

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Terry Musser (608) 266-7461

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - penalties**

Extra Copies:

Submit via email: YES

Requester's email: **Rep.Musser@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Drunken driving convictions

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 05/17/2005	jdye 05/18/2005		_____			
/1			rschluet 05/18/2005	_____	sbasford 05/18/2005	sbasford 05/18/2005	

FE Sent For:

<END>

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/?	phurley	1 5/18 jld					
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5-18-05
<END>

FE Sent For:

In sub. (2)(b) to (e) the court
The court shall count the total
number of convictions under ss. 940.09 (1)
and 940.25 in the person's lifetime,
plus the total number of suspensions,
revocations and other convictions counted
under s. 343.307 (1) except:

1. Suspensions, revocations or
convictions arising out of the
same incident or occurrence shall
be counted as one.
2. ~~After~~ suspensions, revocations or
occurrences not arising out of
the same incident or occurrence and
not, within 10 years of any other
occurrence
suspension, revocation or occurrence
shall not be counted. ~~This~~
Subdiv. does

AB 344

sub

- out of 343.23(2)(b)

then only in

346.65 or other and to say
more than 10 years = not counting.

- and out of DMV holding onto
records forever

erin egan @

1
Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 344

by
11 am
5/18

Gen

1

AN ACT ...; **relating to:** operating while intoxicated, and providing a penalty.

Analysis by the Legislative Reference Bureau

INSERT A

420

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.

INSERT B

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 10 years of another OWI-related offense, so long as the offense does not involve causing serious bodily injury or death to another person. ten

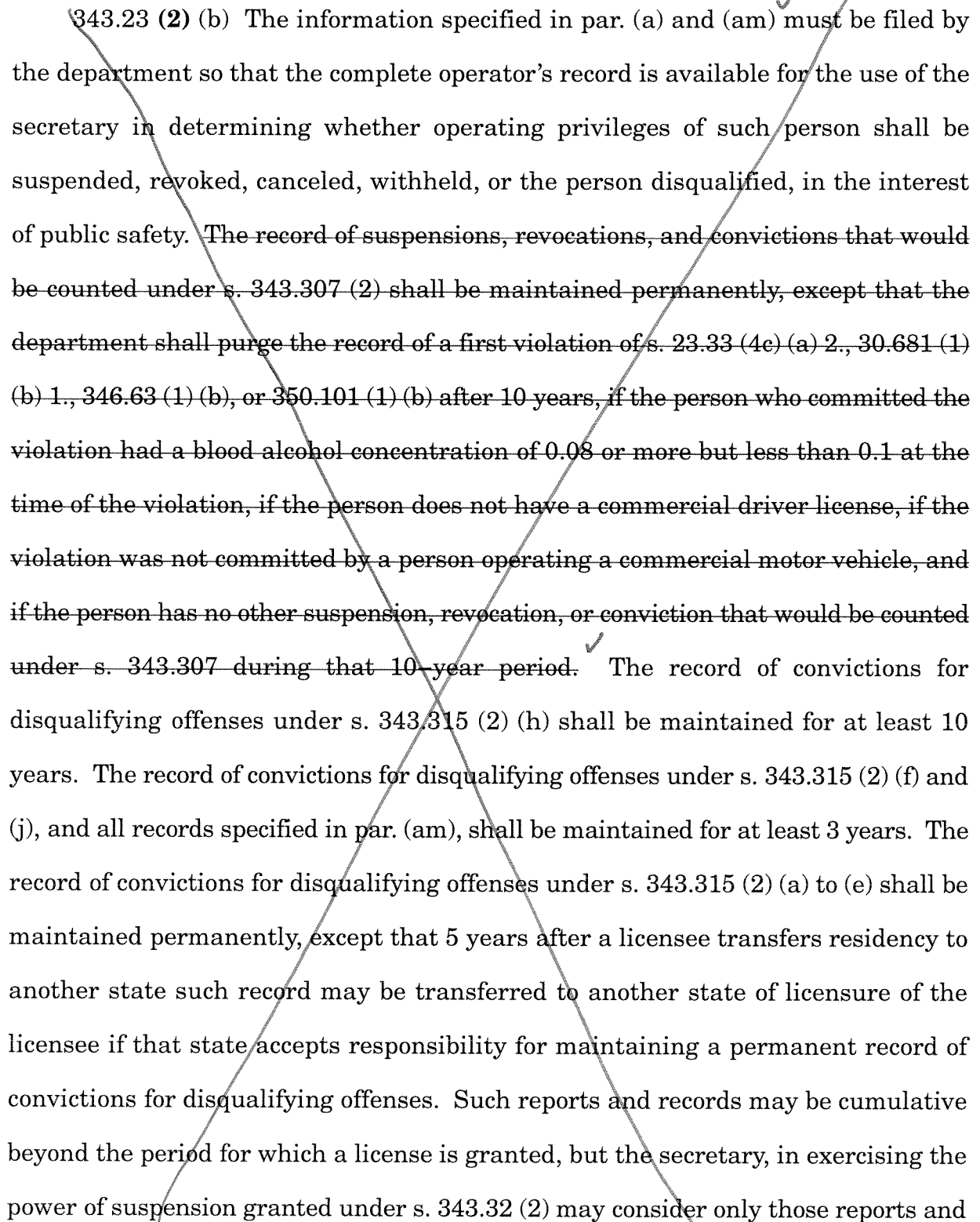
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2
3

SECTION 1. 343.23 (2) (b) of the statutes, as affected by 2003 Wisconsin Acts 30,

33, and 320, is amended to read:

1 ~~343.23 (2) (b) The information specified in par. (a) and (am) must be filed by~~
2 ~~the department so that the complete operator's record is available for the use of the~~
3 ~~secretary in determining whether operating privileges of such person shall be~~
4 ~~suspended, revoked, canceled, withheld, or the person disqualified, in the interest~~
5 ~~of public safety. The record of suspensions, revocations, and convictions that would~~
6 ~~be counted under s. 343.307 (2) shall be maintained permanently, except that the~~
7 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
8 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
9 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
10 ~~time of the violation, if the person does not have a commercial driver license, if the~~
11 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
12 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
13 ~~under s. 343.307 during that 10-year period. The record of convictions for~~
14 ~~disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10~~
15 ~~years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and~~
16 ~~(j), and all records specified in par. (am), shall be maintained for at least 3 years. The~~
17 ~~record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be~~
18 ~~maintained permanently, except that 5 years after a licensee transfers residency to~~
19 ~~another state such record may be transferred to another state of licensure of the~~
20 ~~licensee if that state accepts responsibility for maintaining a permanent record of~~
21 ~~convictions for disqualifying offenses. Such reports and records may be cumulative~~
22 ~~beyond the period for which a license is granted, but the secretary, in exercising the~~
23 ~~power of suspension granted under s. 343.32 (2) may consider only those reports and~~



1 records entered during the 4-year period immediately preceding the exercise of such
2 power of suspension.

3 Cross Reference: Cross Reference: Cross Reference: See also ch. Trans 100, Wis. adm. code. Cross Reference:
NOTE: NOTE: Par. (b) is shown below as affected by 2003 Wis. Acts 30, 33 and 320, eff. 9-30-05. NOTE:

4 (b) The information specified in pars. (a) and (am) must be filed by the department so that the complete operator's record is available for the use of the secretary
5 in determining whether operating privileges of such person shall be suspended, revoked, canceled, or withheld, or the person disqualified, in the interest of public safety.
6 ~~The record of suspensions, revocations, and convictions that would be counted under s. 343.307 (2) shall be maintained permanently, except that the department shall~~
7 ~~purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the violation had~~
8 ~~a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was~~
9 ~~not committed by a person operating a commercial motor vehicle, and if the person has no other suspension, revocation, or conviction that would be counted under~~
10 ~~s. 343.307 during that 10-year period. The record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of~~
11 ~~convictions for disqualifying offenses under s. 343.315 (2) (f) and (j), and all records specified in par. (am), shall be maintained for at least 3 years. The record of~~
12 ~~convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another~~
13 ~~state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions~~
14 ~~for disqualifying offenses. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of~~
15 ~~suspension granted under s. 343.32 (2) may consider only those reports and records entered during the 4-year period immediately preceding the exercise of such power~~
16 ~~of suspension.~~

History: 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 331; 1981 c. 178; 1983 a. 74; 1987 a. 3; 1989 a. 31, 105, 133, 359; 1991 a. 277; 1993 a. 65; 1995 a. 113, 184, 338; 1997 a. 35, 84, 237; 1999 a. 32, 109; 2001 a. 38, 109; 2003 a. 30, 33, 280, 320.

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

18 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$350
19 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months
20 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
21 plus the total number of suspensions, revocations and other convictions counted
22 under s. 343.307 (1) within a 10-year period, occurrences counted under sub. (2d)
23 equals 2, except that suspensions, revocations or convictions arising out of the same
24 incident or occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

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

26 346.65 (2) (c) Except as provided in pars. (f) and (g), shall be fined not less than
27 \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than
28 one year in the county jail if the number of ^{plan} convictions under ss. 940.09 (1) and 940.25
29 in the person's lifetime, plus the total number of suspensions, revocations and other
30 convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals

Handwritten notes: 343.23, (2), (3)

Handwritten notes: NO (3), 12-14, 10-11

1 ~~3, except that suspensions, revocations or convictions arising out of the same~~
2 ~~incident or occurrence shall be counted as one.~~ ✓

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

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

4 346.65 (2) (d) Except as provided in pars. (f) and (g), shall be fined not less than
5 \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than
6 one year in the county jail if the number of ^{plain} ~~convictions under ss. 940.09 (1) and 940.25~~
7 ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~
8 ~~convictions counted under s. 343.307 (1),~~ occurrences counted under sub. (2d) equals
9 ~~4, except that suspensions, revocations or convictions arising out of the same~~
10 ~~incident or occurrence shall be counted as one.~~ ✓

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

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

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

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

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

20 346.65 (2c) In sub. (2) (b) to (e) (2d), the time period shall be measured from
21 the dates of the refusals or violations that resulted in the revocation or convictions.
22 If a person has a suspension, revocation or conviction for any offense under a local

1 ordinance or a state statute of another state that would be counted under s. 343.307
2 (1), that suspension, revocation or conviction shall count as a prior suspension,
3 revocation or conviction under sub. ~~(2) (b) to (e)~~ (2d).

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

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

5 346.65 (2d) In sub. (2) (b) to (e), the court shall count the number of convictions
6 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
7 suspensions, revocations, and other convictions counted under s. 343.307 (1), except
8 that:

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

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

15 (END)

Section # Effective date.
This act takes effect on September 30, 2005.

2005 ASSEMBLY BILL 344

April 22, 2005 - Introduced by Representatives MUSSER, KAUFERT, HAHN, POCAN, BIES and TOWNSEND, cosponsored by Senators GROTHMAN and BRESKE. Referred to Committee on Transportation.

1 AN ACT *to amend* 343.23 (2) (b), 343.307 (1) (intro.) and 343.307 (2) (intro.); and
2 *to create* 343.307 (1m) and 343.307 (2m) of the statutes; **relating to:** operating
3 certain vehicles with a prohibited blood alcohol content.

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.

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 bill requires DOT to purge a person's driving record of a first conviction for operating certain vehicles with a prohibited alcohol concentration after ten years, if the person does not commit another offense within that time period and if the person does not hold a commercial driver's license or was not operating a commercial motor vehicle at the time of the violation. Further, if a person is convicted of another OWI-related offense after an earlier violation has been purged by DOT, a court may

Ins A

Ins B